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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the

2021 Redistricting Plan

Case No. 3AN-21-08869 CI
(Consolidated)

Non-Anchorage Case No: 3PA-21-02397 CI

**[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW OF
PLAINTIFFS MATANUSKA-SUSITNA BOROUGH AND MICHAEL BROWN**

Plaintiffs Matanuska-Susitna Borough and Michael Brown (collectively hereinafter referred to as “MSB”), by and through their counsel of record, Holmes Weddle & Barcott, P.C., hereby submit the following proposed Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

BACKGROUND

1. The 2020 United States census was conducted on April 1, 2020, and the results of the census were reported to the State of Alaska on August 12, 2021.¹

¹ MSB Amend Complaint, para 12; Board Answer to MSB Amend Complaint, para 12.

[PROPOSED] FINDINGS OF FACT AND
CONCLUSIONS OF LAW OF MATANUSKA-
SUSITNA BOROUGH AND MICHAEL
BROWN

2. According to the 2020 census, the population of Alaska was 733,391.²

3. According to the 2020 census, the population of the MSB was 107,081, an increase of 18,086 residents, representing 78 percent of the statewide population growth.³

4. Based on the 2020 census, the ideal quotient for Alaska as contemplated by Art. VI, § 6 of the Alaska Constitution is 18,335 residents per house district.⁴

5. In accordance with the Alaska Constitution, the Alaska Redistricting Board (the “Board”) was established to reapportion the house and senate district boundaries based on the data from the 2020 census.⁵

6. On September 9, 2021, the Board adopted two proposed plans, v. 1 and v. 2, for public comment.⁶

7. On September 20, 2021, the Board adopted several additional proposed plans to include v. 3 and v. 4, and multiple third party plans.⁷

8. On November 10, 2021, the Board adopted its Final Plan and Proclamation of Redistricting (“Final Plan”).⁸

² MSB Amend Complaint, para 13; Board Answer to MSB Amend Complaint, para 13.

³ *Id.*

⁴ MSB Amend Complaint, para 14; Board Answer to MSB Amend Complaint, para 14.

⁵ MSB Amend Complaint, para 16; Board Answer to MSB Amend Complaint, para 16.

⁶ Board Answer to MSB Amend Complaint, para 20.

⁷ *Id.*

⁸ MSB Amend Complaint, para 22; Board Answer to MSB Amend Complaint, para 22.

9. Every district within the MSB (Districts 25, 26, 27, 28, 29 and 30) exceeds the quotient for the ideal house district.⁹

BOARD MEETINGS

AUGUST 23

10. On August 23, 2021, the Board heard a presentation from Eric Sandberg with the State Department of Labor regarding what the 2020 Census data showed about the population in Alaska.¹⁰ It was identified that Mr. Sandberg is an expert in population change, population tracking, and population projection.¹¹

11. The 2020 Census demonstrated that the MSB had the largest growth.¹² Both Anchorage and Fairbanks declined in population.¹³

12. Mr. Sandberg presented a map depicting the districts from the 2013 amended proclamation plan that saw greater than five percent population growth above the new ideal population quotient with dark orange shading.¹⁴ When presenting the MSB, he noted it was a solid block of orange, meaning that basically every MSB district was greater than

⁹ MSB Amend Complaint, para 30; Board Answer to MSB Amend Complaint, para 30.

¹⁰ R. at ARB011081. (Aug. 23, 2021 Tr. pg. 42).

¹¹ *Id.*

¹² R. at ARB011083. (Aug. 23, 2021 Tr. pg. 44).

¹³ *Id.*

¹⁴ R. at ARB011099. (Aug. 23, 2021 Tr. pg. 60).

five percent above the new ideal population quotient based on the 2020 Census populations.¹⁵

13. While the Constitution required a draft plan by September 11, 2021, Executive Director Peter Torkelson recommend to the Board that they allow third parties until September 17 to submit a proposed plan.¹⁶ Mr. Torkelson indicated that the Board may even bring a second draft plan for consideration on September 17.¹⁷

14. Member Borromeo moved that the Board adopt at least one draft plan by September 11, 2021, and that the Board welcome any third-party plans on or before September 17, 2021, at which time the Board would hold a hearing.¹⁸ The motion was adopted.¹⁹

15. Member Bahnke asked that the Board to be able to see Alaska Native populations when working with the data, and she was told by Mr. Sandberg they could add that data for when the Board members are working on the regions.²⁰

¹⁵ R. at ARB011101. (Aug. 23, 2021 Tr. pg. 62).

¹⁶ R. at ARB011129. (Aug. 23, 2021 Tr. pg. 90).

¹⁷ R. at ARB011130. (Aug. 23, 2021 Tr. pg. 91).

¹⁸ R. at ARB011133. (Aug. 23, 2021 Tr. pg. 94).

¹⁹ R. at ARB011136. (Aug. 23, 2021 Tr. pg. 97).

²⁰ R. at ARB011160. (Aug. 23, 2021 Tr. pg. 121).

AUGUST 24

16. Mr. Torkelson advised the Board that online mapping tools had been made available to the public, and he provided a tutorial on how to use it for drawing districts.²¹

17. Member Bahnke asked whether the online tool would have racial demographic data visible.²² Staff advised her that the professional program the Board would be using would have that data available.²³ Member Bahnke asked that the racial demographic data be available to the public as well, while the public is also mapping and submitting maps.²⁴

18. The Board discussed the best strategy to approach how to start mapping.²⁵ Member Borromeo suggested starting with a smaller area so the board members could gain confidence with using the programs, especially because this was the first day they were seeing the online mapping tool.²⁶ Chair Binkley supported Member Borromeo's position that the Board should start mapping together in order to learn the program together.²⁷ Member Simpson agreed to map the Southeast together as a good way to move forward as it would be a "first shot at it, it's not cast in cement yet."²⁸ Chair Binkley reiterated that

²¹ R. at ARB011275-ARB11304. (Aug. 24, 2021 Tr. pg. 4-33).

²² R. at ARB011289-ARB011291. (Aug. 24, 2021 Tr. pg. 18-20).

²³ *Id.*

²⁴ R. at ARB011296-ARB011297. (Aug. 24, 2021 Tr. pg. 25-26).

²⁵ R. at ARB011311-ARB011314. (Aug. 24, 2021 Tr. pg. 40-43).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

this is a good place for the Board to start to get familiar with the program and learn it together.²⁹

19. The Board started its mapping work with an exercise of the Southeast districts using the publically available web program with an overlay of the current precinct boundaries.³⁰ However, the Board encountered a number of problems trying to map with the web program, including not being able to see community names and getting inaccurate population counts within districts.³¹ After spending considerable time trying to use the web tool, the board abandoned it and asked for Eric Sandberg to export the map into the professional program.³² The Board used the professional program for the remainder of the day using an overlay of the current precinct boundaries.³³

20. The Board made its first policy decision regarding population when it determined that Cordova is not socioeconomically integrated with the Southeast, and therefore Southeast should be underpopulated.³⁴ In order to even out the population among

²⁹ *Id.*

³⁰ R. at ARB011343. (Aug. 24, 2021 Tr. pg. 72).

³¹ R. at ARB011344-ARB011392. (Aug. 24, 2021 Tr. pg. 73-121).

³² R. at ARB011391. (Aug. 24, 2021 Tr. pg. 120).

³³ R. at ARB011392. (Aug. 24, 2021 Tr. pg. 121). Eric Sandberg switches to the professional program. R. at ARB011476. (Aug. 24, 2021 Tr. pg. 205). Mr. Presley explains the current district overlay.

³⁴ R. at ARB011376-ARB011377. (Aug. 24, 2021 Tr. pg. 105-106); R. at ARB011379-ARB011380 (Aug. 24, 2021 Tr. pg. 108-109). (Chair Binkley also clarifies for the record once again that the board is just engaged in a mapping exercise and the board will revisit the Cordova question at a later date.)

the four Southeast districts, the Board determines that the target deviation for the Southeast districts should be set at 18,071.³⁵

21. For the remainder of the meeting, the Board was engaged in a work session as they continued with mapping exercises to understand how the programs actually worked.³⁶

22. During the mapping exercise, Member Bahnke made repeated references to drawing the district boundaries using the minority population information visible in the population matrix at the bottom of the screen.³⁷

23. Staff instructed the Board where to find the racial demographic information columns at the bottom of the screen with his cursor.³⁸ Member Bahnke then asked a follow-up question as to whether slope workers are included in the population for the North Slope Borough noting, “look at how much the percent white and Alaska Native just changed when Prudhoe Bay was included.”³⁹

24. As work continued, Member Borromeo observed that it is tricky to map the western coastal villages in the Nome region without going into Athabaskan or Yup’ik

³⁵ R. at ARB011388. (Aug. 24, 2021 Tr. pg. 117).

³⁶ R. at ARB011458-ARB01616. (Aug. 24, 2021 Tr. pg. 187-345). Full duration of work session. R. ARB011465. (Aug. 24, 2021 Tr. pg. 194). Members Bahnke and Borromeo start their mapping exercise.

³⁷ R. at ARB011475. (Aug. 24, 2021 Tr. pg. 204); R. at ARB011537. (Aug. 24, 2021 Tr. pg. 266); R. at ARB011558-ARB011559. (Aug. 24, 2021 Tr. pg. 287-288); R. at ARB011571. (Aug. 24, 2021 Tr. pg. 300) (while the transcript states “indiscernible” you can clearly hear what is stated on the video.) Video R. at JRDB-20210824-0900 at 6:20:48 to 6:20:52 (See Video Excerpt of Record at footnote 51) R. at ARB011578. (Aug. 24, 2021 Tr. pg. 307)

³⁸ R. at ARB011474-011475. (Aug. 24, 2021 Tr. pg. 203-204).

³⁹ R. at ARB011475. (Aug. 24, 2021 Tr. pg. 204).

areas, and suggested that for the sake of the exercise, they map into the lower Doyon region villages to see how it effects population for the coastal district.⁴⁰ Member Borrromeo notes that this sub-region uses Anchorage as a hub and she asks Mr. Presley to add a few interior villages, including Grayling, Holy Cross, McGrath, and Nikolai.⁴¹ Member Bahnke was offended by this pairing, stating, “you’re accidentally including them in our area,” which prompted Member Borrromeo to explain that they need to decide whether to go into Calista or Doyon territory to find the population for the coastal district.⁴² Member Bahnke then directed staff to remove the interior villages from the coastal district.⁴³

25. While mapping the Aleutians, Member Bahnke explored adding Kodiak to even out the population.⁴⁴ In doing so, she asked staff whether adding Kodiak to the Aleutians East district “skewed” the Alaska native population numbers in the table.⁴⁵ Mr. Torkelson explained that Member Bahnke needed to look at the total minority population number instead of the Alaska native number because the total number includes those individuals who identify as more than one race.⁴⁶

⁴⁰ R. at ARB011481-ARB011482. (Aug. 24, 2021 Tr. pg. 210-211).

⁴¹ R. at ARB011482. (Aug. 24, 2021 Tr. pg. 211).

⁴² R. at ARB011483. (Aug. 24, 2021 Tr. pg. 212). In the video, you can hear Member Bahnke express her vocal displeasure after Member Borrromeo’s comment. Video R. at JRDB-20210824-0900 at 4:55:00 to 4:55:34 (See Video Excerpt of Record at footnote 42).

⁴³ R. at ARB011486-ARB011487. (Aug. 24, 2021 Tr. pg. 215-216).

⁴⁴ R. at ARB011535-ARB011539. (Aug. 24, 2021 Tr. pg. 264-268).

⁴⁵ R. at ARB011537. (Aug. 24, 2021 Tr. pg. 266).

⁴⁶ R. at ARB011538-ARB011539. (Aug. 24, 2021 Tr. pg. 267-268).

26. While mapping an interior district horseshoe district around Fairbanks, Member Bahnke asked, “If the majority of it is comprised of rural Interior Alaska, why is the percent Alaska Native so low?,” and asking in follow-up, “Which community is absorbed into that, that is skewing?”⁴⁷ Staff explained that they were trying to add population from the Goldstream area and suburbs of Fairbanks to grab population and further explained that the minority population numbers reflected in the map are similar to how they are in the current districts.⁴⁸

27. The Board next tried mapping the interior horseshoe district to include more rural villages from the Doyon and Ahtna regions in order to exclude the Farmer’s Loop area in Fairbanks.⁴⁹ Staff observed that moving the suburbs out of the rural district improves the minority percentages.⁵⁰ When the Board attempted to include the Delta area in the interior horseshoe district to make up the population, Member Bahnke stated that the minority population drops when they include Delta.⁵¹

28. After a bit more mapping, Member Bahnke asked why the minority population dropped in the interior rural district and asks whether it was because they added

⁴⁷ R. at ARB011558-ARB011559. (Aug. 24, 2021 Tr. pg. 287-288).

⁴⁸ *Id.*

⁴⁹ R. at ARB011563. (Aug. 24, 2021 Tr. pg. 292).

⁵⁰ R. at ARB011567. (Aug. 24, 2021 Tr. pg. 296).

⁵¹ R. at ARB011571. (Aug. 24, 2021 Tr. pg. 300). While the transcript states “indiscernible” you can clearly hear what is being said on the video. Video R. at JRDB-20210824-0900 at 6:20:48 to 6:20:52 (See Video Excerpt of Record at footnote 51).

Delta.⁵² Mr. Presley responded that at best they were able to get the population up to 40 percent but then they took out some villages to use as population for other districts.⁵³ Member Bahnke then directed staff to take out Delta and instead include rural villages running south from that area along the Richardson Highway and east towards the Canadian border.⁵⁴ After including that area, the Board is informed that the area still does not have enough population on its own.⁵⁵ Member Bahnke commented that it makes more sense to her to combine the Doyon and Ahtna villages than to combine them with an urban area, “where they will just be a footnote.”⁵⁶

29. Members Bahnke and Borromeo had a difference of opinion with Member Marcum as to whether or not the Board was able to consider culture as part of socioeconomic integration, Members Bahnke and Borromeo felt that the Board can consider communities of interest.⁵⁷ In response to an e-mail from Mr. Singer regarding the definition of socioeconomic integration, Member Bahnke told the group, “I guess, just to clarify, when I use the word ‘cultural,’ I guess I could replace that with ‘racially aligned’ since race is a factor here. Minority population’s a factor.”⁵⁸

⁵² R. at ARB011578. (Aug. 24, 2021 Tr. pg. 307).

⁵³ R. at ARB011578-ARB011579. (Aug. 24, 2021 Tr. pg. 307-308).

⁵⁴ R. at ARB011579-ARB011580. (Aug. 24, 2021 Tr. pg. 308-309).

⁵⁵ R. at ARB011580. (Aug. 24, 2021 Tr. pg. 309).

⁵⁶ R. at ARB011583-ARB011584. (Aug. 24, 2021 Tr. pg. 312-313).

⁵⁷ R. at ARB011590-ARB011591. (Aug. 24, 2021 Tr. pg. 319-320).

⁵⁸ R. at ARB011602. (Aug. 24, 2021 Tr. pg. 331).

30. Member Borromeo made the observation to the Board, “Yeah, for the ANCs, there’s just going to be a couple that are – we’re not going to make all 12 happy, I don’t think, today based on how I’ve been clicking around; do our best, but some of them are going to be really tough to keep intact.”⁵⁹

31. When the Board returned its discussion to the definition of socioeconomic integration, Member Bahnke read her response to Mr. Singer’s e-mail aloud:

Thanks, Matt. How does the matter of race/minority status play into this? If a community is primarily Alaska Native and rural, would it make more sense to put it in a district that is also primarily Alaska Native and rural, regardless of where they may shop? Obviously a lot of rural Alaskans shop in the hub urban areas when we can, especially if we are on the road system. I mean, it’s not like we’ve got a Fred Meyer in every village...⁶⁰

32. Member Bahnke then inquired as to when the Board will bring in their Voting Rights Act (“VRA”) analysts.⁶¹ Mr. Torkelson explained that they will not be reaching out to the analysts until after the public testimony period during the first week of November.⁶²

33. Member Bahnke stated that she feels the consultant should review their maps before the Board puts them out for public comment.⁶³ Mr. Torkelson explained the Board

⁵⁹ R. at ARB011602. (Aug. 24, 2021 Tr. pg. 331).

⁶⁰ R. at ARB011604-ARB011605. (Aug. 24, 2021 Tr. pg. 333-334).

⁶¹ R. at ARB011605. (Aug. 24 Tr. pg. 334).

⁶² R. at ARB011605-ARB011606. (Aug. 24, 2021 Tr. pg. 334-335).

⁶³ R. at ARB011606. (Aug. 24, 2021 Tr. pg. 335).

can only consider the VRA criteria after the Board has developed a plan that meets the Alaska requirements.⁶⁴ When Member Bahnke asked once again why they can't have the analysis on their final plan to be approved in September, presumably the 30-day deadline to adopt a plan, Mr. Torkelson responds that the Board cannot have a final plan until after the public testimony period because there will be changes made to the maps.⁶⁵

SEPTEMBER 7

34. After public comment, Mr. Torkelson provided a recap of the individual mapping work that occurred since the Board last met.⁶⁶

35. Mr. Torkelson concluded by noting that there were numerous member-drawn maps ready to bring forward, for members to talk about the choices they made and how they solved and addressed issues.⁶⁷

36. The Board decided that prior to individual map presentations, that it would enter into executive session to discuss legal advice with its legal counsel, Matt Singer.⁶⁸

37. When the Board came back on the record, counsel Singer summarized the legal advice provided in executive session.⁶⁹

⁶⁴ R. at ARB011606-ARB011609. (Aug. 24, 2021 Tr. pg. 335-338).

⁶⁵ R. at ARB011609-ARB011611. (Aug. 24, 2021 Tr. pg. 338-340).

⁶⁶ R. at ARB009542. (Sept. 7, 2021 Tr. pg. 13).

⁶⁷ R. at ARB009553. (Sept. 7, 2021 Tr. pg. 24).

⁶⁸ R. at ARB009558. (Sept. 7, 2021 Tr. pg. 29).

⁶⁹ R. at ARB009560-ARB009564. (Sept. 7, 2021 Tr. pg. 31-35).

38. The Board started its mapping discussion with a presentation by Member Simpson regarding Southeast Alaska.⁷⁰

39. Member Simpson noted that the Board split the state up into a number of regions, and since each member represents a different geographic area, it fell to him to look closely at Southeast.⁷¹

40. Member Simpson worked together with Member Bahnke to develop a map of the whole state.⁷²

41. Member Simpson noted the challenge with population in Southeast, when considering the ideal number of 18,335 per district, because when adding Cordova the region is overpopulated but without it the region is underpopulated.⁷³ Member Simpson ultimately decided to underpopulate the region by including Yakutat in Southeast but not Cordova, which he noted also works socioeconomically, because Cordova does not consider itself to be part of Southeast.⁷⁴

42. Member Simpson discussed how he worked to pair communities within Southeast Alaska, noting how some were more urban while others were rural, discussing

⁷⁰ R. at ARB009564. (Sept. 7, 2021 Tr. pg. 35).

⁷¹ R. at ARB009565. (Sept. 7, 2021 Tr. pg. 36).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

the socioeconomics of the pairings, and discussing the compactness of the districts proposed.⁷⁵

43. Member Simpson noted that in creating the map, they respected all borough boundaries, got as close as they could to equality of population, but focused primarily on the contiguity and the compactness and the socioeconomic integration of the communities that were put into each district.⁷⁶

44. Member Bahnke next presented the map of Northwest Alaska she prepared with Member Simpson.⁷⁷

45. Member Bahnke discussed how they worked to draw districts that were compact, contiguous, and socioeconomically integrated, being mindful of borough boundaries and population.⁷⁸

46. Member Marcum presented next, she had worked on a couple of different statewide maps and some regional maps.⁷⁹ However, she indicated that the MSB and Anchorage were kind of assigned to her, given her experience with both of those areas.⁸⁰

⁷⁵ R. at ARB009567-ARB009569. (Sept. 7, 2021 Tr. pg. 38-40).

⁷⁶ R. at ARB009569. (Sept. 7, 2021 Tr. pg. 40).

⁷⁷ R. at ARB009569-ARB009570. (Sept. 7, 2021 Tr. pg. 40-41).

⁷⁸ R. at ARB009570-ARB009573. (Sept. 7, 2021 Tr. pg. 41-44).

⁷⁹ R. at ARB009574-ARB009575. (Sept. 7, 2021 Tr. pg. 45-46).

⁸⁰ R. at ARB009575-ARB009576. (Sept. 7, 2021 Tr. pg. 46-47).

47. Member Marcum pointed out that the population in the MSB greatly increased.⁸¹

48. In drafting her map, Member Marcum indicated that she was looking for both compactness while respecting the city boundaries of Wasilla, Palmer, and Houston.⁸²

49. Member Marcum thought of the MSB in two ways, the core areas in Houston, Wasilla and Palmer, and then the areas within the MSB where residents live a more rural lifestyle, and that population was placed in a larger geographic district.⁸³

50. Member Marcum provided the overview of her MSB part of the map, trying to keep the districts as compact as possible while considering the socioeconomics of the residents in the more rural part of the MSB.⁸⁴

51. Member Bahnke then indicated before Chair Binkley presented his map, that she wanted to present the map she had drafted with Member Simpson based on input from Doyon.⁸⁵

52. Member Bahnke indicated that she chose communities that are socioeconomically more integrated with rural Interior Alaska, and had almost made a horseshoe shape around Fairbanks.⁸⁶

⁸¹ R. at ARB009576. (Sept. 7, 2021 Tr. pg. 47).

⁸² *Id.*

⁸³ R. at ARB009578. (Sept. 7, 2021 Tr. pg. 49).

⁸⁴ R. at ARB009579. (Sept. 7, 2021 Tr. pg. 50).

⁸⁵ R. at ARB009579-ARB009580. (Sept. 7, 2021 Tr. pg. 50-51).

⁸⁶ R. at ARB009580. (Sept. 7, 2021 Tr. pg. 51).

53. Chair Binkley presented his map next.⁸⁷ Chair Binkley noted that his map had significant similarities with the other maps already presented with regard to Southeast and Northwest Alaska.⁸⁸

54. Chair Binkley indicated that with regard to Interior Alaska, he came up with the same horseshoe idea, including all the Yukon River villages downstream as far as Kaltag, the highway villages from Eagle, Chicken, up the Taylor Highway, down to the Tok cutoff, all of the Richardson Highway villages, down to and including Valdez.⁸⁹

55. Chair Binkley kept the MSB intact, and paired it with the intact Denali Borough.⁹⁰

56. Chair Binkley kept the FNSB intact as one entity.⁹¹

57. Even though the FNSB was overpopulated, Chair Binkley found it more important to keep the borough intact since its contiguous, compact, and socioeconomically aligned by definition.⁹²

58. Chair Binkley noted that he did not include Delta with the FNSB, because he paired it with all of the Richardson Highway communities, as well as Tok.⁹³

⁸⁷ R. at ARB009582. (Sept. 7, 2021 Tr. pg. 53).

⁸⁸ R. at ARB009584. (Sept. 7, 2021 Tr. pg. 55).

⁸⁹ R. at ARB009585. (Sept. 7, 2021 Tr. pg. 56).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² R. at ARB009586. (Sept. 7, 2021 Tr. pg. 57).

⁹³ R. at ARB009588. (Sept. 7, 2021 Tr. pg. 59).

59. Finally, Member Borromeo presented her 40-district map.⁹⁴

60. Member Borromeo stated, “[w]hen I approached the mapping, I did so intentionally without putting the current boundary lines on there because this is a Redistricting Board. I wasn’t trying to protect any of the current districts.”⁹⁵

61. Member Borromeo indicated that when she looked at the MSB, she tried to keep the valley intact, following the borough boundary as best as she could.⁹⁶

62. Member Borromeo testified that one problem with drafting is that when she got to the last district, Valdez was really the wildcard, and she could not figure out where to put it.⁹⁷

63. Member Borromeo paired Valdez with South Anchorage due to the oil industry, and the fact that there is daily flights between Anchorage and Valdez.⁹⁸

64. When further discussing the map, Member Bahnke asked if Valdez was socioeconomically integrated with the rural interior communities.⁹⁹ Chair Binkley responded that Valdez is socioeconomically integrated with the highway communities

⁹⁴ R. at ARB009621. (Sept. 7, 2021 Tr. pg. 92).

⁹⁵ *Id.*

⁹⁶ R. at ARB009625. (Sept. 7, 2021 Tr. pg. 96).

⁹⁷ R. at ARB009629. (Sept. 7, 2021 Tr. pg. 100).

⁹⁸ R. at ARB009630. (Sept. 7, 2021 Tr. pg. 101).

⁹⁹ R. at ARB009666. (Sept. 7, 2021 Tr. pg. 137).

including Glennallen, Gakona, Kenny Lake, Copper River, Gakona Junction, Mantasta, Paxson, all along the Richardson Highway corridor.¹⁰⁰

65. Member Simpson stated that the socioeconomic factors are the factors that would support pairing Valdez with Fairbanks and that it was the numerical factors which were causing the Board to remove Valdez.¹⁰¹ He added that he could see the connection with Valdez in the big rural district, because it is the end of the road where people from up there go for sportfishing and other activities.¹⁰²

66. The Board continued to address and struggle with Valdez, and indicated that they had to put Valdez somewhere.¹⁰³

67. During further discussion, Member Borrromeo reported to Chair Binkley that three of the members had drawn maps that encroached into the FNSB for its population.¹⁰⁴ However, Chair Binkley indicated that based on the legal advice on socioeconomic integrity, he felt it was important to keep the FNSB intact.¹⁰⁵ Chair Binkley understood the crux of the legal advice was that it gave the Board more ability to have higher

¹⁰⁰ *Id.*

¹⁰¹ R. at ARB009698. (Sept. 7, 2021 Tr. pg. 169).

¹⁰² *Id.*

¹⁰³ R. at ARB009669-ARB009670. (Sept. 7, 2021 Tr. pg. 140-141).

¹⁰⁴ R. at ARB009674. (Sept. 7, 2021 Tr. pg. 145).

¹⁰⁵ R. at ARB009675. (Sept. 7, 2021 Tr. pg. 146).

deviations, because the Board has to consider socioeconomic integration, compactness and contiguity first.¹⁰⁶

68. Chair Binkley acknowledged that by having a higher deviation, residents are under-represented.¹⁰⁷

69. Mr. Torkelson advised the Board that the MSB had population for 5.84, and by adding the Denali Borough, the population increased to approximately 5.93.¹⁰⁸

SEPTEMBER 8

70. At the outset of the meeting, Member Borrromeo stated that the Board is considering race as part of socioeconomic integration in response from public comment.¹⁰⁹

71. Further, in response to comments that the Board was abusing the executive session process, Member Borrromeo stated that she felt the executive session process was appropriate for receiving advice from the attorney and indicated that the Board would continue to do so.¹¹⁰

72. Based on his prior experience, the Board requested that Eric Sandberg address the Board.¹¹¹ Mr. Sandberg pointed out that there was a fair amount of consensus to include MSB with Denali Borough and the North Slope Borough with the Northwest

¹⁰⁶ R. at ARB009678. (Sept. 7, 2021 Tr. pg. 149).

¹⁰⁷ R. at ARB009679. (Sept. 7, 2021 Tr. pg. 150).

¹⁰⁸ R. at ARB009680-ARB009681. (Sept. 7, 2021 Tr. pg. 151-152).

¹⁰⁹ R. at ARB010502-ARB010503. (Sept. 8, 2021 Tr. pg. 7-8).

¹¹⁰ R. at ARB010503-ARB010504. (Sept. 8, 2021 Tr. pg. 8-9).

¹¹¹ R. at ARB010509-ARB010510. (Sept. 8, 2021 Tr. pg. 14-15).

Arctic Borough.¹¹² However, he noted three issues: 1) the northern line of Bristol Bay, Aleutians, 2) whether or not to split FNSB into the rural interior district, and 3) whether or not Valdez would be placed with the rural interior district.¹¹³

73. Member Borromeo stated that when she approached mapping the MSB, she wanted to keep the MSB within the Borough, and then respect the city boundaries as they are drawn.¹¹⁴

74. Member Borromeo highlighted that Palmer is more agricultural with a more rural feel compared to Wasilla, so she wanted to keep the Palmer, Butte, and residents around the waterway in a distinct and separate area.¹¹⁵ She protected the city boundaries of Wasilla.¹¹⁶ She also drew a district that encompassed Houston and Big Lake.¹¹⁷

75. Member Borromeo broke the Borough boundary into Anchorage, because of the daily commute to and from Anchorage for work.¹¹⁸

76. Member Borromeo was shooting for less than 1 percent deviation when she was populating her districts.¹¹⁹

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ R. at ARB010550. (Sept. 8, 2021 Tr. pg. 55).

¹¹⁵ R. at ARB010551. (Sept. 8, 2021 Tr. pg. 56).

¹¹⁶ R. at ARB010552. (Sept. 8, 2021 Tr. pg. 57).

¹¹⁷ *Id.*

¹¹⁸ R. at ARB010553. (Sept. 8, 2021 Tr. pg. 58).

¹¹⁹ R. at ARB010557. (Sept. 8, 2021 Tr. pg. 62).

77. Member Marcum presented her map and explained that she used the existing city boundaries of Wasilla, Houston, and Palmer and paired Palmer with Butte.¹²⁰ Member Marcum highlighted that you have residents who are in between, and who are not living within either city, and she used those populations to firm up the compactness of the Wasilla and Palmer districts.¹²¹

78. The differences were discussed between the two presentations of the MSB, and the only real difference was that Member Marcum had pulled in some population outside of city limits to make the districts more compact.¹²² It was discussed that this did not impact the socioeconomic integration, as these were still residents within the core of the MSB.¹²³

79. As the Board continued to work with the map, Member Borrromeo indicated that she was uncomfortable with the deviation, because she felt that one of the districts within the MSB was not comparable to its neighboring districts.¹²⁴

80. Member Borrromeo raised an issue that Chair Binkley made a strong argument for preserving the FNSB boundary, and in the instant case, the Board was not preserving a borough boundary by sharing population with Anchorage.¹²⁵ Member

¹²⁰ R. at ARB010553-ARB010554. (Sept. 8, 2021 Tr. pg. 58-59).

¹²¹ *Id.*

¹²² R. at ARB010566. (Sept. 8, 2021 Tr. pg. 71).

¹²³ R. at ARB010567. (Sept. 8, 2021 Tr. pg. 72).

¹²⁴ R. at ARB010595. (Sept. 8, 2021 Tr. pg. 100).

¹²⁵ R. at ARB010600. (Sept. 8, 2021 Tr. pg. 105).

Borromeo pointed out that if the Board is protecting borough boundaries, it is not just protecting the FNSB boundary, it is going to be all the borough boundaries.¹²⁶

81. Ultimately, when discussing whether to pair MSB with Anchorage, it was discussed that while it helps the MSB to gain population, it does not help or hurt Anchorage, as Anchorage was also short population for the target.¹²⁷

SEPTEMBER 9

82. Member Borromeo expressed concern with attempting to map Anchorage, MSB and the Denali Borough together to create 22 districts. She indicated that she was concerned about keeping communities of interest together.¹²⁸

83. Ultimately, the Board elected not to consider Anchorage and the MSB together and to treat them separately.¹²⁹

84. Member Borromeo indicated she was happy with where the Board was at, with deviations of less than 2 percent.¹³⁰

85. Member Borromeo indicated that the draft map was started with Chair Binkley's suggestion that the FNSB remain intact.¹³¹

¹²⁶ R. at ARB010600-ARB010601. (Sept. 8, 2021 Tr. pg. 105-106).

¹²⁷ R. at ARB010642. (Sept. 8, 2021 Tr. pg. 147).

¹²⁸ R. at ARB009866-ARB009868. (Sept. 9, 2021 Tr. pg. 42-44).

¹²⁹ R. at ARB009873-ARB009875. (Sept. 9, 2021 Tr. pg. 49-51).

¹³⁰ R. at ARB009872. (Sept. 9, 2021 Tr. pg. 48).

¹³¹ R. at ARB009902. (Sept. 9, 2021 Tr. pg. 78).

86. Chair Binkley affirmed this idea by voicing his appreciation for her willingness to support keeping the FNSB intact, as one socioeconomic integrated area.¹³²

87. During the process, Member Bahnke continued to raise the issue of the VRA, and wanted to make sure the Board was comporting with its responsibilities.¹³³ Member Bahnke questioned the timing of using a VRA expert to review any proposed plan and wondered why the Board could not have the same analysis completed before adopting its proposed plan.¹³⁴

88. Member Borrromeo noted the abuse of the executive session, as she stated that the Board ate up a lot of time talking about procedural issues that “maybe didn’t need to be done in executive session.”¹³⁵

89. An idea was introduced about creating maps that show Valdez out of the rural interior and in with either the MSB or the Gulf Coast.¹³⁶ Member Marcum stated that she was uncomfortable with the idea and expressed concern that doing so would cause other populations to shift.¹³⁷ Member Simpson indicated he would like to see what the third parties suggest, as he was open to looking at different options for Valdez.¹³⁸

¹³² R. at ARB009904. (Sept. 9, 2021 Tr. pg. 80).

¹³³ R. at ARB009925. (Sept. 9, 2021 Tr. pg. 101).

¹³⁴ R. at ARB009925-ARB009927. (Sept. 9, 2021 Tr. pg. 101-103).

¹³⁵ R. at ARB009939. (Sept. 9, 2021 Tr. pg. 115).

¹³⁶ R. at ARB009988-ARB009989. (Sept. 9, 2021 Tr. pg. 164-165).

¹³⁷ *Id.*

¹³⁸ *Id.*

90. Ultimately, the Board voted pursuant to Article VI, Section 10 of the Alaska Constitution to adopt Board composite v. 1 and Board composite v. 2.¹³⁹

SEPTMEBER 17

91. Mr. Torkelson stated that the day after Board v. 1 and v. 2. were adopted, the Board continued to draft.¹⁴⁰

92. Mr. Torkelson indicated that at the next meeting the Board planned to review third-party maps and determine which ones to adopt for the Board’s public outreach tour.¹⁴¹ The Board took public comment on its adopted maps, and there was a presentation from several other third party groups regarding alternative proposed maps.¹⁴²

93. The “Interior Coalition” consisting of Doyon, Ahtna, Tanana Chiefs Conference, and Fairbanks Native Association, also joined by Sealaska, presented its map (referred to as the “Doyon Map”), through its attorney Tanner Amdur-Clark.¹⁴³

94. During his presentation, Mr. Amdur-Clark pointed out to the Board that while deviations are inevitable, they must be concentrated in rural not urban areas, as populations within urban areas are more evenly and closely distributed.¹⁴⁴

¹³⁹ R. at ARB010001-ARB010002. (Sept. 9, 2021 Tr. pg. 177-178).

¹⁴⁰ R. at ARB008306. (Sept. 17, 2021 Tr. pg. 4).

¹⁴¹ R. at ARB008307. (Sept. 17, 2021 Tr. pg. 5).

¹⁴² R. at ARB08308. (Sept. 17, 2021 Tr. pg. 6).

¹⁴³ R. at ARB008403. (Sept. 17, 2021 Tr. pg. 101).

¹⁴⁴ R. at ARB008404. (Sept. 17, 2021 Tr. pg. 102).

95. The Doyon Map paired Valdez with the eastern MSB and did not pair Valdez with any of the highway districts or pipeline districts that go north.¹⁴⁵

96. Mr. Amdur-Clark was asked to explain the socioeconomic integration between Valdez and the eastern MSB, and Mr. Amdur-Clark responded with unrelated puffery and no real answer, failing to discuss any factor of socioeconomic integration.¹⁴⁶ Chair Binkley further asked if a resident of Valdez would have to drive through another district to get to the other part of the district in the eastern part of the MSB, and it was confirmed that was indeed the case.¹⁴⁷

97. The Doyon Map included the MSB with the Denali Borough, but it carved out Cantwell to place it in the interior district.¹⁴⁸ It was stated that the goal was to get Cantwell into the Ahtna region, even though it lies within the Denali Borough.¹⁴⁹

98. Later in the day, Member Bahnke inquired as to whether ANCSA boundaries are a factor the Board is able to consider, and Board counsel advised that ANCSA boundaries are one way to look at socioeconomic integration.¹⁵⁰

¹⁴⁵ R. at ARB008415. (Sept. 17, 2021 Tr. pg. 113).

¹⁴⁶ R. at ARB008416-ARB008417. (Sept. 17, 2021 Tr. pg. 114-115).

¹⁴⁷ R. at ARB008418. (Sept. 17, 2021 Tr. pg. 116).

¹⁴⁸ R. at ARB008429. (Sept. 17, 2021 Tr. pg. 127).

¹⁴⁹ R. at ARB008430. (Sept. 17, 2021 Tr. pg. 128).

¹⁵⁰ R. at ARB008466. (Sept. 17, 2021 Tr. pg. 164).

99. Steve Colligan appeared before the Board and indicated that this was the fourth different redistricting process in which he has been involved.¹⁵¹

100. Mr. Colligan cautioned that it is possible to torture data long enough and make associations between certain fact and data that totally distort reality.¹⁵²

101. Mr. Colligan noted the numerous ideas that had been presented throughout the day and indicated he called it Picasso by committee, as redistricting is an abstract art.¹⁵³ He noted that it is hard to come to an agreement, but at the end of the day it is a process, it is about drawing good boundaries that follow things that people and communities identify with.¹⁵⁴

102. During public testimony by Randy Ruedrich, Member Bahnke inquired as to his thoughts about breaking ANCSA boundaries.¹⁵⁵ This discussion resulted in Member Bahnke asking Board counsel to weigh in on borough versus ANCSA boundaries and if either carries more weight than the other.¹⁵⁶ Counsel advised that boroughs are by definition socioeocnimically integrated, but that ANCSA boundaries can also be used as an indicia of socioeconomic integration.¹⁵⁷

¹⁵¹ R. at ARB008470. (Sept. 17, 2021 Tr. pg. 168).

¹⁵² R. at ARB008469-ARB008470. (Sept. 17, 2021 Tr. pg. 167-168).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ R. at ARB008479. (Sept. 17, 2021 Tr. pg. 177).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

103. Mike Brown, the MSB Manager participated in public comment before the Board.¹⁵⁸ Mr. Brown noted that in a very general sense, the MSB assembly desired that the MSB be allocated six house districts and three senate seats.¹⁵⁹

104. Mr. Brown indicated that if the Board determined it necessary to include additional populations extending outside the MSB, that the MSB supported including residents to the east towards Glennallen.¹⁶⁰

105. Mr. Brown indicated that the MSB had reviewed Board v. 1 and v. 2 and noted that looking specifically at the Butte, Lazy Mountain, and Knik River areas, the MSB proposed having those more rural communities paired with the eastern district that extends up to Sutton have more rural alignment that more closely aligns how those rural residents are represented at the local government level.¹⁶¹

106. Counsel Singer indicated to Mr. Brown that the Board had seen some public plans pairing Valdez with the MSB and asked for this reaction.¹⁶² Mr. Brown indicated that from a socioeconomic perspective there are differences in the things the MSB communities are focused on, particularly as Valdez is a coast community.¹⁶³

¹⁵⁸ R. at ARB008503. (Sept. 17, 2021 Tr. pg. 201).

¹⁵⁹ R. at ARB008504. (Sept. 17, 2021 Tr. pg. 202).

¹⁶⁰ R. at ARB008505. (Sept. 17, 2021 Tr. pg. 203).

¹⁶¹ R. at ARB008506. (Sept. 17, 2021 Tr. pg. 204).

¹⁶² R. at ARB008506-ARB008507. (Sept. 17, 2021 Tr. pg. 204-205) .

¹⁶³ *Id.*

SEPTEMBER 20

107. The Board took additional public comment, and then turned its focus to further discussion the third party maps that were presented to the Board.¹⁶⁴

108. Member Bahnke again asked her question regarding ANSCA boundaries and borough boundaries, whether one takes precedence over another.¹⁶⁵ She was again advised that there is precedent that local government boundaries such as borough boundaries are by definition socioeconomically integrated and that ANCSA boundaries can provide a way of looking at an area to determine whether or not it is socioeconomically integrated.¹⁶⁶

109. Member Marcum presented map v. 3, and indicated that based on feedback there is a desire to keep Anchorage and the MSB separate.¹⁶⁷ Therefore, v. 3 was created to do just that.¹⁶⁸

110. When drafting v. 3, Member Marcum worked to achieve the lowest practicable deviations within both the MSB and Anchorage.¹⁶⁹ With the v. 3 map, Member Marcum was able to achieve a MSB total deviation of less than 1 percent for the MSB.¹⁷⁰

¹⁶⁴ R. at ARB010157. (Sept. 20, 2021 Tr. pg. 14).

¹⁶⁵ R. at ARB010177. (Sept. 20, 2021 Tr. pg. 34)..

¹⁶⁶ R. at ARB010178. (Sept. 20, 2021 Tr. pg. 35)

¹⁶⁷ R. at ARB010295. (Sept. 20, 2021 Tr. pg. 152).

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ R. at ARB010299. (Sept. 20, 2021 Tr. pg. 156).

111. Member Borrromeo presented map v. 4, because v. 2 was never a complete buildout.¹⁷¹

112. In v. 4, Member Borrromeo left Valdez out of the rural interior district and purported to use the Trans Alaska Pipeline as the boundary.¹⁷²

113. When discussing why she paired Valdez with MSB, Member Borrromeo indicated that it was purely due to the fact that the MSB was underpopulated by 20 percent (based on her errant math), and in her mind there were no other areas to where the Board could grab population.¹⁷³ Member Borrromeo asserted that precedent indicates it is permissible to connect Valdez and the MSB.¹⁷⁴

114. The Board adopted Board v. 3 to replace Board v. 1 and Board v. 4 to replace board v. 2.¹⁷⁵

NOVEMBER 2

115. Representative Matt Claman testified before the Board and highlighted that the 1998 amendment to the constitution changed the language with regard to deviation to as much as practicable, and he thought that changed the way the Board has to do its work to really bring the deviation number as low as possible.¹⁷⁶ Representative Claman opined

¹⁷¹ R. at ARB010310. (Sept. 20, 2021 Tr. pg. 167).

¹⁷² R. at ARB010313. (Sept. 20, 2021 Tr. pg. 170).

¹⁷³ R. at ARB010317. (Sept. 20, 2021 Tr. pg. 174).

¹⁷⁴ *Id.*

¹⁷⁵ R. at ARB010339-ARB010340. (Sept. 20, 2021 Tr. pg. 196-197).

¹⁷⁶ R. at ARB008945. (Nov. 2, 2021 Tr. pg. 15).

that in the five most popular boroughs and municipalities, the deviation number really should be close to 1 percent which is really one-half percent per district.¹⁷⁷ Representative Claman pointed out that when you count the largest five boroughs or municipalities they constitute about 33 or 34 of the districts statewide, so in the end, your total statewide deviations will be quite low.¹⁷⁸

116. After additional public comment, the Board entered executive session.¹⁷⁹ Following that executive session, the Board had a lengthy discussion on the record of what just occurred during executive session.¹⁸⁰

117. The Board referenced the necessary public hearings that occur after the adoption of proposed plans, and noted that it had hearings on the six plans that were adopted outside of the timeframe allotted under the constitution.¹⁸¹

118. At the beginning of the work session, Mr. Torkelson indicated that there was consensus regarding the “four VRA districts”, and encouraged the board to finalize those districts to start.¹⁸²

¹⁷⁷ R. at ARB008945-ARB008946. (Nov. 2, 2021 Tr. pg. 15-16).

¹⁷⁸ *Id.*

¹⁷⁹ R. at ARB008998-ARB008999. (Nov. 2, 2021 Tr. pg. 68-69).

¹⁸⁰ R. at ARB008999-ARB009008. (Nov. 2, 2021 Tr. pg. 69-78).

¹⁸¹ R. at ARB009018. (Nov. 2, 2021 Tr. pg. 88).

¹⁸² R. at ARB008752. (Nov. 2, 2021 Tr. pg. 55). By this date, the Board specifically begins to refer to the four rural Districts 37, 38, 39, and 40 as the VRA districts. *See also*, R. at ARB008707 (Nov 2, 2021 Tr. pg. 10).

119. Mr. Torkelson did realize that those four VRA districts hinged on the premise that District 36 would not change.¹⁸³

120. Chair Binkley pointed out that if the board adds another 4,000 to District 36 from Fairbanks, the Board will either have to take out Valdez or adjust the population in District 39.¹⁸⁴

121. Member Bahnke expressed concern regarding the approach of the Board, it was unclear to her if the Board was going to be voting on each part of the state before moving on or voting for one plan.¹⁸⁵

122. Chair Binkley and Member Simpson went back and forth and indicated that if there was not consensus in a region, the Board would have to vote.¹⁸⁶

NOVEMBER 3

123. The Board's stated goal was to evaluate the various regions of the State, but not necessarily to discuss any big policy decisions.¹⁸⁷

124. The Board started its discussion with the districts within the Municipality of Anchorage districts.¹⁸⁸ Despite the fact the ideal quotient was established at 18,335, members and staff discussed that the population number they were aiming for in the

¹⁸³ *Id.*

¹⁸⁴ R. at ARB008758. (Nov. 2, 2021 Tr. pg. 61).

¹⁸⁵ R. at ARB008826. (Nov. 2, 2021 Tr. pg. 129).

¹⁸⁶ R. at ARB008827. (Nov. 2, 2021 Tr. pg. 130).

¹⁸⁷ R. at ARB007370. (Nov. 3, 2021 Tr. pg. 10).

¹⁸⁸ R. at ARB007362. (Nov. 3, 2021 Tr. pg. 2).

Anchorage districts was 18,202.¹⁸⁹ This was thereafter referred to as the “Anchorage target”.¹⁹⁰

125. The Board relied on Mr. Torkelson who explained, Anchorage only had the population for 15.88 districts, so to not break the municipal boundary and keep the Municipality of Anchorage whole, all the districts in Anchorage would need to be underpopulated.¹⁹¹

126. With regard to the mapping in the Municipality of Anchorage, Member Borromeo presented a summary of her plan first, prefacing that, “my Anchorage is premised on containing the municipal population within the boundaries of the Municipality of Anchorage.”¹⁹²

127. During her presentation, Member Simpson expressed concerns with the Board using the Anchorage target, and that it is more useful to stick with the legal deviation target of 18,335.¹⁹³

128. Member Borromeo stated that she spent a lot of time working in Anchorage, and specifically pointed out that she and Mr. Torkelson spent two hours trying to drive down deviations.¹⁹⁴

¹⁸⁹ R. at ARB007366. (Nov. 3, 2021 Tr. pg. 6).

¹⁹⁰ R. at ARB007367. (Nov. 3, 2021 Tr. pg. 7).

¹⁹¹ *Id.*

¹⁹² R. at ARB007371. (Nov. 3, 2021 Tr. pg. 11) .

¹⁹³ R. at ARB007389-ARB007390. (Nov. 3, 2021 Tr. pg. 29-30).

¹⁹⁴ R. at ARB007391. (Nov. 3, 2021 Tr. pg. 31).

129. The Board next considered the Anchorage map presented by Member Marcum, who spent significant time discussing the reasons that she shaped the boundaries within Anchorage as she did.¹⁹⁵

130. The Board and its staff continued its detailed review and discussion of both the Anchorage target and constitutional deviations for the Anchorage districts when Member Marcum presented her proposed map for the region.¹⁹⁶

131. Assuming that all of Anchorage was socioeconomically integrated, Member Marcum sought to get as tight of deviations and compact districts as possible.¹⁹⁷

132. At the end of Member Marcum’s presentation, the Board engaged in discussion regarding whether they can consider, “shades of socioeconomic interconnectedness within a city,” and the Board was advised that observing neighborhood boundaries is not an excuse to draw districts that are non-compact or have significant population deviation.¹⁹⁸

133. Next, the Board worked to actively map the Gulf Coast region, which includes Kodiak, Seward, and the Kenai Peninsula, specifically looking to drive down those deviations.¹⁹⁹

¹⁹⁵ R. at ARB007404-ARB007408. (Nov. 3, 2021 Tr. pg. 44-48).

¹⁹⁶ R. at ARB007418-ARB007430. (Nov. 3, 2021 Tr. pg. 58-70).

¹⁹⁷ R. at ARB007409. (Nov. 3, 2021 Tr. pg. 49).

¹⁹⁸ R. at ARB007438. (Nov. 3, 2021 Tr. pg. 78).

¹⁹⁹ R. at ARB007467. (Nov. 3, 2021 Tr. pg. 107).

134. The Board discussed the Kenai area explaining that its deviations are tight and all districts.²⁰⁰

135. The Board then had a lively and contentious discussion regarding the deviations and socioeconomic integration of the VRA districts, Districts 37 through 40, for which 88 transcript pages are dedicated.²⁰¹

136. Once Chair Binkley started the discussion to explore alternative boundaries for the VRA districts, Member Bahnke became incensed and provided impromptu testimony outside of the designated time for public testimony, “as a regional tribal leader for the Kawerak Region,” and then relied on that testimony during the discussion to bolster her opposition to changing the boundaries.²⁰²

137. At the same time and during the public meeting, Member Borromeo was actively texting with Tanner Amdur-Clark, the attorney working to advocate for the Doyon Map.²⁰³ In those texts, Mr. Amdur-Clark is advocating for Doyon’s position in the debate at hand while Member Borromeo responds in support of Mr. Amdur-Clark’s assertions and assures him, “We have it.”²⁰⁴

²⁰⁰ R. at ARB007594. (Nov. 3, 2021 Tr. pg. 234).

²⁰¹ R. at ARB07506-ARB007593. (Nov. 3, 2021 Tr. pg. 146-233).

²⁰² R. at ARB007528-ARB007537. (Nov. 3, 2021 Tr. pg. 168-177).

²⁰³ Deposition Exhibit 34, at pg. ARB00155156-ARB00155157; ARB comes back into session at 1:00PM (R. at ARB007519), video mark 3 hours and 4 minutes. Text messages start at 1:10PM.

²⁰⁴ *Id.*

138. The Board went on to review the boundaries of the ANCSA regions and their populations to assist their discussion,²⁰⁵ and Chair Binkley engaged the Board in a mapping session of the VRA districts to show his perspective of where the VRA districts could be drawn.²⁰⁶ The discussion continued until the members acknowledged they were at a stand-off and agreed to move on to a new area.²⁰⁷

139. At the end of the discussion, Member Marcum suggested that the Board set aside the discussion to go look at Fairbanks, because any changes from Fairbanks may flow to other areas and that the Board may have to start from scratch in some areas depending on what they decide to do about Fairbanks.²⁰⁸

140. The Board then turned to a lengthy discussion to accommodate the Fairbanks North Star Borough's request not to over or under populate their districts.²⁰⁹

141. Chair Binkley framed the discussion as, "the big policy question, is going to be do we keep the borough together or do we break the borough apart and send a portion of that into District 36?"²¹⁰

²⁰⁵ R. at ARB007545-ARB007564. (Nov. 3, 2021 Tr. pg. 185-204).

²⁰⁶ R. at ARB007571-ARB007588. (Nov. 3, 2021 Tr. pg. 211-228).

²⁰⁷ R. at ARB007593-ARB007594. (Nov. 3, 2021 Tr. pg. 233-234).

²⁰⁸ R. at ARB007591. (Nov. 3, 2021 Tr. pg. 231).

²⁰⁹ R. at ARB007595-ARB007662. (Nov. 3, 2021 Tr. pg. 235-302).

²¹⁰ R. at ARB007596. (Nov. 3, 2021 Tr. pg. 236).

142. Chair Binkley explained that, “If you break it apart, it’s going to go into 36 and 36 is going to gain population.²¹¹ We’re about 4,000 people I believe over the ideal district size, the .2.”²¹²

143. When Member Simpson and Member Marcum suggested moving a smaller portion of the population instead, such as 2,000 people, to reduce the deviation²¹³ Member Binkley responded, “if you read the resolution from the Fairbanks North Star Borough, *and I give a lot of weight to that*, they want the ideal size”.²¹⁴

144. The Board subsequently agreed that they will try to find a way to move all 4,000 people and if it cannot be done they will consider a lower amount.²¹⁵

145. After agreeing that if they move population out of FNSB, then all of that population should go to one district, District 36, the conversation switched to whether Valdez should be removed from District 36 and placed with the MSB.²¹⁶

146. Member Marcum immediately pointed out that MSB, “didn’t want Valdez. Valdez was exceptionally clear, to a hundred and however many pages, that they don’t want Mat-Su either.”²¹⁷

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ R. at ARB007597. (Nov. 3, 2021 Tr. pg. 237) (emphasis added).

²¹⁵ R. at ARB007598. (Nov. 3, 2021 Tr. pg. 238).

²¹⁶ R. at ARB007599-ARB007602. (Nov. 3, 2021 Tr. pg. 239-242).

²¹⁷ R. at ARB007600. (Nov. 3, 2021 Tr. pg. 240).

147. Member Borrromeo focused purely on population and stated she believed it’s a natural fit for District 36 to take the excess population from FNSB, and that if they keep the map of the southeast and Cordova the same, then Valdez is, “going to have to go to the next neighboring borough that they’ll fit in.”²¹⁸

148. In response, Member Marcum explained the socioeconomic ties Valdez cited in support of their position to be in the interior district.²¹⁹ She further noted that the MSB expressed their ties to the Denali Borough, and by combining the Denali Borough and MSB populations together, it creates nearly the ideal population for six districts.²²⁰

149. Member Marcum went on to state that if you dump the 4,000 population from Valdez into the MSB, the board is diluting the vote and ignoring the population growth in the area.²²¹

150. The Board continued with its discussion of Fairbanks, as to whether there were VRA implications for District 36 if it took some of FNSB’s population, but Chair Binkley reiterated that to respect the work and statement of the FNSB, then it is best for the Board to take 4,000 people out of the current FNSB districts and place them into District 36.²²²

²¹⁸ *Id.*

²¹⁹ R. at ARB007600-ARB007601. (Nov. 3, 2021 Tr. pg. 240-241).

²²⁰ *Id.*

²²¹ *Id.*

²²² R. at ARB 007603-ARB007612. (Nov. 3, 2021 Tr. pg. 243-252).

151. The Board then discussed the goal deviation for the FNSB districts and the deviations as they currently stood in the adopted maps, but Member Bahnke clarified that by driving these deviations lower it was to the detriment of the MSB and Valdez not desiring to be paired together.²²³

152. Member Simpson again suggested bringing a lower population number out of FNSB which, “could minimize other adverse impacts on the horseshoe district or somewhere else.”²²⁴ Member Simpson and Mr. Singer agreed that instead of focusing on a specific population number, the board should, “look for a socioeconomic cluster somehow that’s a better fit into 36.”²²⁵

153. In response to the suggestion, Member Binkley suggested that another reason why FNSB wants the exact population number removed is to have greater influence over the senate seat.²²⁶

154. Member Bahnke again raised the question as to whether the Board had to move all 4,000 people out,²²⁷ Chair Binkley once again advocated for the FNSB position reiterating that to respect the work of the FNSB, 4,000 people need to be moved out and that its practicable to do so.²²⁸

²²³ R. at ARB007620. (Nov. 3, 2021 Tr. pg. 260).

²²⁴ R. at ARB007635-ARB007636. (Nov. 3, 2021 Tr. pg. 275-276).

²²⁵ *Id.*

²²⁶ R. at ARB007637. (Nov. 3, 2021 Tr. pg. 277).

²²⁷ R. at ARB007638-ARB007639. (Nov. 3, 2021 Tr. pg. 278-288).

²²⁸ R. at ARB007639-ARB007640. (Nov. 3, 2021 Tr. pg. 279-280).

155. Given the ripple effect of moving 4,000 people out of the FNSB, Chair Binkley offers the solution of pairing Valdez with the communities in the Prince William Sound.²²⁹

156. This suggestion lead to the Board discussing placing Cordova with Southeast to which Member Simpson retorted, “so you populate Fairbanks to overpopulate Southeast...”²³⁰

157. Even though she ignored Member Marcum’s discussion regarding the ideal population pairing of the Denali Borough and MSB, Member Borrromeo explained her idea for the FNSB that in her mind it was appropriate to move the full 4,000 people into District 36 because without Valdez, District 36 had enough population for .8 districts while FNSB had enough population for 5.2.²³¹

158. Member Borrromeo explained that all of the deviations for the FNSB districts she has proposed are at 1 percent or lower.²³²

159. The Board then decided to discuss the MSB.²³³

²²⁹ *Id.*

²³⁰ R. at ARB007640-ARB007641. (Nov. 3, 2021 Tr. pg. 280-281).

²³¹ R. at ARB007642-ARB007644. (Nov. 3, 2021 Tr. pg. 282-284).

²³² R. at ARB007657. (Nov. 3, 2021 Tr. pg. 297).

²³³ R. at ARB007662. (Nov. 3, 2021 Tr. pg. 302).

160. To start, the Board ignored the fact that the MSB had provided a resolution and testimony through its MSB Manager Michael Brown, and instead started with the mischaracterization that the MSB endorsed the AFFER version of MSB.²³⁴

161. Member Marcum presented her plan first and indicated that it is more compact than the AFFER plan.²³⁵

162. Member Marcum indicated that the MSB testified to the fact they were comfortable being paired with the Denali Borough.²³⁶

163. Member Marcum explained that she updated her Mat-Su map to reflect the local testimony the Board received regarding the boundaries of the Palmer utility district and the location of the hospital.²³⁷

164. Counsel for the Board asked permission to read the request from the MSB, and he reminded the Board, the MSB asked for an eastern MSB district, a Goose Bay/Big Lake district, a Houston northwest district paired with Denali Borough, a Wasilla district, Palmer district, and a southern district in the core area between Palmer and Wasilla.²³⁸

²³⁴ R. at ARB007663. (Nov. 3, 2021 Tr. pg. 303). The MSB and the AFFER plans were identical, but the MSB never endorsed the AFFER plan. R. at ARB007667 (Nov. 3, 2021 Tr. pg. 307).

²³⁵ R. at ARB007664. (Nov. 3, 2021 Tr. pg. 304).

²³⁶ R. at ARB007668. (Nov. 3, 2021 Tr. pg. 308).

²³⁷ R. at ARB007670-ARB007671. (Nov. 3, 2021 Tr. pg. 310-311).

²³⁸ R. at ARB007672. (Nov. 3, 2021 Tr. pg. 312).

165. Member Marcum indicated that her map paired pretty close the request from the MSB.²³⁹

166. The map presented by Member Marcum did not have any huge portions coming in to delete the population, particularly as it did not combine Valdez with the MSB based on her response to the Board’s receipt of public comment.²⁴⁰

167. In an attempt to give parity to the treatment of Anchorage, Member Marcum noted that the target population of the MSB is 18,200.²⁴¹

168. Member Borrromeo presented her plan for the MSB next.²⁴²

169. Member Borrromeo indicated that she worked to drive down deviations in the MSB, but that her map did pair Valdez with the MSB.²⁴³ She described the pairing of Valdez with the MSB as “a necessary fit, albeit a little uncomfortable”.²⁴⁴ However, due to decisions in FNSB and Southeast, and wholly ignoring the process, Member Borrromeo indicated this was the only place left for Valdez to go.²⁴⁵

170. During her discussion, Member Borrromeo noted that the MSB population had grown quite heavily in certain areas.²⁴⁶

²³⁹ R. at ARB007673. (Nov. 3, 2021 Tr. pg. 313).

²⁴⁰ R. at ARB007674. (Nov. 3, 2021 Tr. pg. 314).

²⁴¹ *Id.*

²⁴² R. at ARB007677-ARB007694. (Nov. 3, 2021 Tr. pg. 317-334).

²⁴³ R. at ARB007679. (Nov. 3, 2021 Tr. pg. 319).

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ R. at ARB007680. (Nov. 3, 2021 Tr. pg. 320).

171. During Member Borromeo’s presentation, she never references any considerations made based on local government input or local testimony provided to the Board.

172. When asked about the district deviations on her map, Member Borromeo explained that all of the districts were in the 2s, overpopulated.²⁴⁷

173. When asked how her map aligns with the presentation from the MSB for six districts, Member Borromeo jokingly responds that she hit every target and “gave them a little extra.”²⁴⁸

174. Member Marcum pointed out that Member Borromeo’s map split Palmer and Wasilla into parts of at least three different districts.²⁴⁹

175. When Chair Binkley sought clarification about her prior response concerning how her plan aligned with the request from the MSB, particularly that the MSB specifically requested not to be paired with Valdez, Member Borromeo responded, “Yeah. Like I said, I gave them everything they wanted plus a little more. I aim to please.”²⁵⁰

176. Following her comments, the Board erupted in laughter.²⁵¹

²⁴⁷ R. at ARB007684. (Nov. 3, 2021 Tr. pg. 324).

²⁴⁸ R. at ARB007684-ARB007685. (Nov. 3, 2021 Tr. pg. 324-325); Video R. at GMT20211103-170718 at. 6:24:27 to 6:25:03 (See Video Excerpt of Record at footnote 248).

²⁴⁹ R. at ARB007685. (Nov. 3, 2021 Tr. pg. 325); Video R. at GMT20211103-170718 at. 6:25:04 to 6:25:44 (See Video Excerpt of Record at footnote 249).

²⁵⁰ R. at ARB007686-ARB007687. (Nov. 3, 2021 Tr. pg. 326-327); Video R. at GMT20211103-170718 at. 6:26:35 to 6:26:55 (See Video Excerpt of Record at footnote 250).

²⁵¹ *Id.*

177. Member Borromeo’s flippant remark turns into a running joke. This is demonstrated when Member Bahnke voices her support for Member Borromeo’s map and in ending her comments she indicates that it appears Member Borromeo’s map gives the MSB most of what it asked for, and Chair Binkley chimes in “plus more”, resulting in more laughter.²⁵²

178. Member Marcum concludes the discussion by clarifying that she had a version of the map that paired the MSB with Valdez, but that was before all the testimony from Valdez, and hearing unanimous testimony from Valdez how they want anything but to be with the MSB.²⁵³ She went on to note that they received testimony from the MSB that they did not want to be paired with Valdez.²⁵⁴

179. Counsel Singer posed the question to the Board that if it honored the request by Valdez and MSB not to be paired, and honored the FNSB resolution to get to one person, one vote, had the Board explored another solution for Valdez?²⁵⁵

²⁵² R. at ARB007691. (Nov. 3, 2021 Tr. pg. 331); Video at R. GMT20211103-170718 at. 6:30:57 to 6:31:33 (See Video Excerpt of Record at footnote 252).

²⁵³ R. at ARB007693. (Nov. 3, 2021 Tr. pg. 333).

²⁵⁴ *Id.* Video R. at GMT20211103-170718 at. 6:33:14 to 6:34:00 (See Video Excerpt of Record at footnote 254).

²⁵⁵ R. at ARB007694. (Nov. 3, 2021 Tr. pg. 334).

180. The board engaged in discussion and concluded that it would be worthwhile to go back to the maps and explore options for pairing Valdez with the Prince William Sound communities.²⁵⁶

181. At the end of the meeting, the Board discussed the possibility of ending the day with drawing different options, but also discussed going into executive session to discuss the legal pairing of Valdez with the MSB.²⁵⁷

182. When the Board comes back on record, it immediately goes into executive session closing the public meeting at 4:45 PM.²⁵⁸

183. During executive session Member Borromeo is once again texting counsel for Interior Coalition, Tanner Amdur-Clark, and Tom Begich, separately, asking them to help her find case law supporting joining MSB and Valdez into one district.²⁵⁹

²⁵⁶ R. at ARB007694-ARB007696. (Nov. 3, 2021 Tr. pg. 334-336); Video R. at GMT20211103-170718 at. 6:34:06 to 6:36:58 (See Video Excerpt of Record at footnote 256).

²⁵⁷ R. at ARB007696-ARB007697. (Nov. 3, 2021 Tr. pg. 336-337); While the transcript states that the conversation is “indiscernible,” when you listen to the video itself it is clear that the Board is asking whether there are legal implications of pairing Valdez with the MSB, and whether they should discuss that issue in executive session before starting the mapping exercise of pairing Valdez with the Prince William Sound communities. Video R. at GMT20211103-170718 at. 6:37:08 to 6:38:15 (See Video Excerpt of Record at footnote 257).

²⁵⁸ R. at ARB007698. (Nov. 3, 2021 Tr. pg. 338). Earlier in the day, the Board came back on the record at 1:00 PM at pg. 159, video mark 3 hours and 4 minutes. The meeting ends at pg. 339, video mark 6 hours and 49 minutes. The board therefore adjourned at approximately 4:46 PM.

²⁵⁹ Depo. Exhibit 34 at ARB00155157-ARB00155159; Ex. 3010, pg. 104. The text chains regarding MSB start at 5:02 PM. See FN 204, the Board adjourned at approximately 4:46 PM to enter into executive session.

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184. The Board indicated that its goal was to complete the house plan by the following day and discussed how to accomplish that goal.²⁶⁰ Member Borromeo suggested that the Board start at the top of the state with District 40 and come down the coast to plug in options.²⁶¹ Chair Binkley noted that some of those districts are dependent on what happens in other areas of the state.²⁶² But Member Borromeo continued to suggest that the Board start on the North Slope and go all the way down to the Aleutians.²⁶³ Members Marcum and Simpson noted that there was not consensus, but that the Board has to work to build consensus.²⁶⁴

185. Ultimately the Board agreed that there was agreement with regard to District 40.²⁶⁵

186. The Board next turned to Southeast, and Member Simpson indicated he had received a telephone call from the chairman of the Board of Sealaska recommending changes with regard to Prince of Wales, and that changed Member Simpson's opinion regarding how to district Prince of Wales.²⁶⁶

²⁶⁰ R. at ARB009174. (Nov. 4, 2021 Tr. pg. 4).

²⁶¹ *Id.*

²⁶² R. at ARB009175. (Nov. 4, 2021 Tr. pg. 5).

²⁶³ *Id.*

²⁶⁴ R. at ARB009175-ARB009176. (Nov. 4, 2021 Tr. pg. 5-6).

²⁶⁵ R. at ARB009185. (Nov. 4, 2021 Tr. pg. 15).

²⁶⁶ R. at ARB009186. (Nov. 4, 2021 Tr. pg. 16).

187. The Board moved on to discussion of Districts 3 and 4 in Southeast, and Member Borromeo expressed her concern with the pairings based on the input from individuals in the region.²⁶⁷

188. The Board ultimately agreed with Member Simpson's recommendations and came to agreement with regard to Districts 1, 2, 3, and 4.²⁶⁸

189. Chair Binkley suggested the Board next turn to the FNSB and address what to do with Valdez.²⁶⁹

190. Despite the fact that the night before, just before adjourning to executive session to discuss the legal implications of pairing the MSB and Valdez, the Board indicated that they were going to draw Valdez with other Prince William Sound communities as an alternative, the Board immediately returned to discussion of pairing Valdez with the MSB.²⁷⁰

191. Member Marcum pointed out again that after the public comment from Valdez, she put all of her maps that paired Valdez with the MSB aside.²⁷¹

²⁶⁷ R. at ARB009190. (Nov. 4, 2021 Tr. pg. 20).

²⁶⁸ R. at ARB009192. (Nov. 4, 2021 Tr. pg. 22).

²⁶⁹ *Id.*

²⁷⁰ R. at ARB009193. (Nov. 4, 2021 Tr. pg. 23); See also FN 257, Video R. at GMT20211103-170718 at 6:37:08 to 6:38:15 (See Video Excerpt of Record at footnote 257).

²⁷¹ R. at ARB009197. (Nov. 4, 2021 Tr. pg. 27).

192. Member Borrromeo noted that the pairing of Valdez with the MSB, grabs Valdez minimally on the edge.²⁷²

193. Member Simpson noted that the proposed district includes a coastal strip that includes Valdez and pairs it with the non-incorporated parts of the MSB.²⁷³

194. Member Bahnke spoke in favor of the pairing, and despite the fact there was no discussion regarding socioeconomic integration, she stated, “its already been established that Valdez is socioeconomically compatible with the Mat-Su...”.²⁷⁴ She went on to indicate that based on the advice of counsel that there is precedent for including Valdez in the MSB.²⁷⁵

195. Member Marcum encouraged the Board to address FNSB first, because putting Valdez with the MSB necessitates a change without a discussion about that change.²⁷⁶ Member Marcum pointed out that adding another 4,000 people into the MSB, the fastest growing area, and then now overpopulating the MSB is part of the discussion the Board should have when discussing the FNSB.²⁷⁷

196. Member Bahnke disagreed because she felt that the alternative to overpopulating the MSB was going backwards socioeconomically by breaking more

²⁷² R. at ARB009202. (Nov. 4, 2021 Tr. pg. 32).

²⁷³ R. at ARB009205. (Nov. 4, 2021 Tr. pg. 35).

²⁷⁴ R. at ARB009207. (Nov. 4, 2021 Tr. pg. 37).

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ R. at ARB009207-ARB009208. (Nov. 4, 2021 Tr. pg. 37-38).

ANCSA boundaries.²⁷⁸ She went on to again rely on legal precedent regarding linkages between Valdez and the MSB, without any discussion of the whether there are actual, current socioeconomic connections between the two, because she was concerned about the impacts that would result from potentially pushing the 4,000 people to District 39.²⁷⁹

197. Given the concerns expressed, the Board elected to address FNSB.²⁸⁰ Chair Binkley again noted that the Board started with the premise of keeping the FNSB whole, but once the FNSB assembly weighed in, that was given a lot of weight and it was determined necessary to push people out from the FNSB into District 36 to achieve the ideal district size.²⁸¹ Chair Binkley reiterated that he took the comments from the FNSB seriously, because he felt it was significant that an elected body weight in, even though it was not a unanimous decision, and he respected that.²⁸²

198. Chair Binkley presented his revised FNSB map and discussed the reasons for the lines that were drawn.²⁸³ Chair Binkley noted that by moving the 4,000 people out of the FNSB into District 36, he then paired Valdez with the MSB, as he stated essentially

²⁷⁸ R. at ARB009208. (Nov. 4, 2021 Tr. pg. 38).

²⁷⁹ *Id.*

²⁸⁰ R. at ARB009209. (Nov. 4, 2021 Tr. pg. 39).

²⁸¹ R. at ARB009210-ARB009211. (Nov. 4, 2021 Tr. pg. 40-41).

²⁸² *Id.*

²⁸³ R. at ARB009214-ARB009217. (Nov. 4, 2021 Tr. pg. 44-47).

replacing Valdez with the FNSB.²⁸⁴ Chair Binkley noted that this made District 36 whole, to avoid a need to take population away from District 36 and push into District 39.²⁸⁵

199. Chair Binkley referred back to comments from the previous day about keeping District 39 as proposed.²⁸⁶ Member Bahnke indicated that she supported this drafting because it avoided pulling rural Athabascan communities into a different ANCSA region.²⁸⁷

200. After further discussion about the FNSB, Member Borromeo voiced her support for the map presented by Chair Binkley and noted that it would help shore up the VRA districts and Southcentral.²⁸⁸

201. In the midst of the discussion, Member Bahnke asks the Board to determine what the plan for the FNSB does for District 37.²⁸⁹ It is discussed by the Board that it would not disturb the VRA districts.²⁹⁰ Member Marcum points out it only impacts Valdez and the MSB.²⁹¹

²⁸⁴ R. at ARB009217. (Nov. 4, 2021 Tr. pg. 47).

²⁸⁵ R. at ARB009218. (Nov. 4, 2021 Tr. pg. 48).

²⁸⁶ *Id.*

²⁸⁷ R. at ARB009222. (Nov. 4, 2021 Tr. pg. 52).

²⁸⁸ R. at ARB009241. (Nov. 4, 2021 Tr. pg. 71).

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ R. at ARB009242. (Nov. 4, 2021 Tr. pg. 72).

202. Chair Binkley went on in his discussion to suggest that the Board consider carving Cantwell out of the Denali Borough to keep Ahtna whole.²⁹² Following the suggestion, the Board notes that they did receive public testimony to that effect.²⁹³

203. The Board further considers the deviation by adding Cantwell to District 36, and Mr. Torkelson notes that zero census blocks from the Denali Borough and the MSB need to be taken in order to make it look contiguous.²⁹⁴

204. The Board ultimately agrees to pull Cantwell into District 36, but in doing so, and while she does not object, Member Marcum points out that this decision takes the Board to another very hard discussion about Valdez.²⁹⁵ Because of Member Marcum's comment, Member Bahnke felt it was necessary to note that Valdez has been established to have some socioeconomic ties with the MSB, compared to the other option, which would push villages from District 36 into District 39.²⁹⁶ Again, there was no discussion or evidence presented regarding the socioeconomic ties referenced by Member Bahnke, and in fact, Member Marcum continued to say that the MSB testified to the socioeconomic **non-integration** of Valdez, and conversely Valdez testified to the socioeconomic **non-integration** with the MSB.²⁹⁷

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ R. at ARB009246. (Nov. 4, 2021 Tr. pg. 76).

²⁹⁵ R. at ARB009250. (Nov. 4, 2021 Tr. pg. 80).

²⁹⁶ *Id.*

²⁹⁷ *Id.* (emphasis added).

205. Following the discussion, Member Bahnke again requests the Board finalize the VRA districts.²⁹⁸

206. When the Board turned its discussion to Anchorage, the possibility of pairing Valdez with Anchorage was discussed.²⁹⁹ Member Marcum pointed out that pairing Valdez with either Anchorage or the MSB would overpopulate those districts, and therefore they would be underrepresented.³⁰⁰

207. The Board discussed the public comments received from Valdez, and it was again discussed that they requested a pairing with Richardson Highway communities.³⁰¹ Member Borromeo again returned to her joke that the MSB and Valdez were getting what they asked for “and more”.³⁰²

208. Member Marcum voiced that she was not comfortable making any decision regarding Anchorage until some of the other things that influence where Valdez would be districted were solved.³⁰³

209. During further discussion regarding Anchorage, it was again noted that they were using the Anchorage target of 18,220 instead of the legal target of 18, 335.³⁰⁴ The

²⁹⁸ R. at ARB009251. (Nov. 4, 2021 Tr. pg. 81).

²⁹⁹ R. at ARB009274. (Nov. 4, 2021 Tr. pg. 104).

³⁰⁰ R. at ARB009277. (Nov. 4, 2021 Tr. pg. 107).

³⁰¹ R. at ARB009282. (Nov. 4, 2021 Tr. pg. 112).

³⁰² *Id.* Video R. at JRDB-20211104-0900 at. 00:11:30 to 00:11:53 (See Video Excerpt of Record at footnote 302).

³⁰³ R. at ARB009283. (Nov. 4, 2021 Tr. pg. 113).

³⁰⁴ R. at ARB009302. (Nov. 4, 2021 Tr. pg. 132).

Board made the policy decision to underpopulate Anchorage and spread that underpopulation over the 16 Anchorage districts.³⁰⁵

210. During a break, Member Marcum initiated a conversation with Member Borrromeo to discuss the pairing of Valdez with the MSB. at the suggestion of Chair Binkley.³⁰⁶ Member Marcum wanted to know how tied Member Borrromeo was to having Valdez paired with the MSB, and tries to convince her there are many other paths.³⁰⁷

211. Member Borrromeo later indicated that the only other option she saw for Valdez was an Anchorage pairing, and requested that the Board close out FNSB and Districts 37, 38 and 39.³⁰⁸ Member Marcum indicated but she was not seeing the Valdez and Anchorage pairing as probable as the other possibilities.³⁰⁹

212. Following Member Marcum's comment, Member Borrromeo indicated that she firmly objected to putting Valdez into a large, rural district, as she did not feel the residents of Valdez have the same socioeconomic integration with Holy Cross, Allakaket, McGrath and other villages.³¹⁰ In making her statement, Member Borrromeo made no

³⁰⁵ R. at ARB009305. (Nov. 4, 2021 Tr. pg. 135).

³⁰⁶ R. at ARB009319. (Nov. 4, 2021 Tr. pg. 149).

³⁰⁷ *Id.* Video R. at JRDB-20211104-0900 at. 00:57:29 to 00:58:47 (See Video Excerpt of Record at footnote 307).

³⁰⁸ R. at ARB009329. (Nov. 4, 2021 Tr. pg. 159).

³⁰⁹ *Id.*

³¹⁰ R. at ARB009330. (Nov. 4, 2021 Tr. pg. 160).

comment regarding the 4,000 residents from the FNSB or the other Richardson Highway communities included in District 36.³¹¹

213. Member Bahnke indicated again that when considering whether to put Valdez with the interior communities or the MSB, that she felt the Board should rely on court precedent about the pairing of Valdez with the MSB, and that the Interior district was not an option for Valdez.³¹² In making her statement, Member Bahnke made no reference to the factors the Board must consider in order to pair Valdez with the MSB.³¹³

214. Member Simpson indicated that with regard to Valdez, he thought intuitively that it made the most sense to pair Valdez with the Richardson highway communities as the public commented.³¹⁴ Member Simpson explained that the problem with that is that the FNSB is overpopulated and there is nowhere for those people to go except into the large rural district.³¹⁵ Member Simpson indicated that the only alternative was the MSB, and he did not feel great about doing that.³¹⁶

215. Member Bahnke continued to urge the Board to lock in the VRA districts.³¹⁷

³¹¹ *Id.*

³¹² R. at ARB009331-ARB009332. (Nov. 4, 2021 Tr. pg. 161-162).

³¹³ *Id.*

³¹⁴ R. at ARB009333. (Nov. 4, 2021 Tr. pg. 163).

³¹⁵ *Id.*

³¹⁶ R. at ARB009334. (Nov. 4, 2021 Tr. pg. 164).

³¹⁷ *Id.*

216. Member Borrromeo alluded to a lengthy discussion about certain issues in executive session that were not VRA issues³¹⁸

217. Member Borrromeo suggested that the Board address Districts 37, 38 and 39.³¹⁹ However, Member Marcum indicated that those could be impacted by what the Board does with Valdez.³²⁰ In response, Member Bahnke indicated she felt comfortable with where they need to put Valdez, and Member Simpson indicated he would not vote to put Valdez in District 36.³²¹ Member Borrromeo indicated that she would not vote to put Valdez in District 36, and Member Bahnke subsequently announced that the option is off the table.³²²

218. Member Marcum reiterated to the Board that they cannot just default Valdez to the MSB.³²³ She reiterated that dumping 4,000 voters into the portion of the state with the highest population increase results in overpopulating the MSB and resulting in them their underrepresentation.³²⁴

219. Member Marcum continued to voice her frustration that the Board was not willing to consider Valdez' primary request and the historical record of Valdez with the

³¹⁸ R. at ARB009336-ARB009337. (Nov. 4, 2021 Tr. pg. 166-167).

³¹⁹R. at ARB009337. (Nov. 4, 2021 Tr. pg. 167); Video R. at JRDB-20211104-0900 at. 01:27:23 to 01:28:28 (See Video Excerpt of Record at footnote 319).

³²⁰ *Id.*

³²¹ R. at ARB009338 (Nov. 4, 2021 Tr. pg. 168); Video R. at JRDB-20211104-0900 at. 01:27:23 to 01:28:28 (See Video Excerpt of Record at footnote 319).

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

Interior.³²⁵ Member Borromeo was critical about Member Marcum’s need to address possibilities of where to pair Valdez, and Member Marcum pointed out that she had not closed off the possibility of including Valdez with their primary socioeconomic tie to the Richardson Highway.³²⁶ She noted that she had multiple versions of maps placing Valdez in District 36 that allowed the Board to still break parts of the FNSB.³²⁷ Member Marcum confirmed that map did require changes to the VRA districts that certain Board members were trying to lock in.³²⁸

220. Member Bahnke indicated without explanation that she felt Districts 39 and 36 were being held hostage until an Anchorage map is decided.³²⁹

221. Member Marcum continued to offer to show pairings of Valdez with Interior maps she had put together.³³⁰ However, Member Bahnke summarily dismissed Member Marcum and indicated the Board had seen plenty of those.³³¹

222. Member Marcum again entertained the idea and indicated she did not push to make changes to Districts 36, 37, 38, 39 earlier in the redistricting process, because she

³²⁵ R. at ARB009340-ARB009341. (Nov. 4, 2021 Tr. pg. 170-171); Video R. at JRDB-20211104-0900 at. 01:31:13 to 01:32:32 (See Video Excerpt of Record at footnote 325).

³²⁶ R. at ARB009342. (Nov. 4, 2021 Tr. pg. 172); Video R. at JRDB-20211104-0900 at. 01:31:13 to 01:32:32 (See Video Excerpt of Record at footnote 325).

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ R. at ARB00934.3 (Nov. 4, 2021 Tr. pg. 173); Video R. at JRDB-20211104-0900 at. 01:31:13 to 01:32:32 (See Video Excerpt of Record at footnote 325).

had been working make other parts of the map right.³³² Member Borromeo indicated that she felt Member Marcum was holding the VRA districts hostage.³³³ Member Marcum took issue with the comment, as she noted it is not holding a district hostage if changes there are necessary to make other parts of the state compact, contiguous and socioeconomically integrated.³³⁴

223. Member Marcum expressed her frustration that the Board was making the VRA districts more important than other areas of the state.³³⁵

224. The Board ultimately found majority consensus with Districts 37, 38, and 39, but Member Marcum made clear she did not agree.³³⁶

225. The Board attempted to discuss the FNSB and noted that the big question mark continued to be Valdez.³³⁷ Member Bahnke continued to prioritize not disrupting District 36 over all other considerations.³³⁸

226. Chair Binkley noted that there was consensus, not unanimity, with Valdez being paired with either the MSB or Anchorage.³³⁹

³³² R. at ARB009344. (Nov. 4, 2021 Tr. pg. 174); Video R. at JRDB-20211104-0900 at. 01:33:28 to 01:34:33 (See Video Excerpt of Record at footnote 332).

³³³ R. at ARB009345. (Nov. 4, 2021 Tr. pg. 175); Video R. at JRDB-20211104-0900 at. 01:33:28 to 01:34:33 (See Video Excerpt of Record at footnote 332).

³³⁴ *Id.*

³³⁵ R. at ARB009346. (Nov. 4, 2021 Tr. pg. 176).

³³⁶ R. at ARB009350. (Nov. 4, 2021 Tr. pg. 180).

³³⁷ R. at ARB009354. (Nov. 4, 2021 Tr. pg. 184).

³³⁸ R. at ARB009355. (Nov. 4, 2021 Tr. pg. 185).

³³⁹ R. at ARB009358. (Nov. 4, 2021 Tr. pg. 188).

227. Member Marcum confirmed that the Board had taken the pairing of Valdez with the Richardson Highway off the table.³⁴⁰

228. In further discussion of the FNSB, Chair Binkley again reiterated that he felt strongly, at least initially, about keeping the FNSB together.³⁴¹ However, he noted that the FNSB assembly was elected by all the people in the borough, which had a different idea, and he respected that.³⁴²

229. Without any justification or explanation for her comment, Member Bahnke comments that the residents from FNSB being placed into District 36 are more socioeconomically integrated with that population than the people in Valdez.³⁴³

230. Member Marcum continued to raise the issues of overpopulating the MSB by pairing it with Valdez and suggested moving the whole Denali Borough into District 36.³⁴⁴

231. Chair Binkley indicated that tomorrow the Board would allow Member Marcum to present her map and then to reach consensus on all 40 districts.³⁴⁵

³⁴⁰ R. at ARB009360. (Nov. 4, 2021 Tr. pg. 190).

³⁴¹ R. at ARB009378. (Nov. 4, 2021 Tr. pg. 208).

³⁴² *Id.*

³⁴³ R. at ARB009380. (Nov. 4, 2021 Tr. pg. 210).

³⁴⁴ R. at ARB009381. (Nov. 4, 2021 Tr. pg. 211).

³⁴⁵ R. at ARB009387. (Nov. 4, 2021 Tr. pg. 217).

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232. Member Marcum continued to express her concerns about Valdez, and so she continued to try and find a solution.³⁴⁶ She reiterated that Valdez was very clear about their desire to be with the Richardson Highway, but that the option was taken off the table the day prior.³⁴⁷ She went onto note that the other solution proposed by Valdez was to be paired with coastal communities, but that it was also taken off the table, although she does not indicated when it was taken off the table.³⁴⁸ She noted that the options left were for Valdez to be paired with either the MSB or Anchorage.³⁴⁹

233. Member Marcum noted that both Valdez and the MSB provided testimony that they did not want to be paired with the other, leaving only Anchorage.³⁵⁰ However, Member Marcum noted that due to parameters from legal counsel, she was not able to find a reasonable solution pairing Valdez with Anchorage.³⁵¹

234. During the work to finalize the map, the Board considered the two versions of the MSB.³⁵² Member Marcum continued to express her displeasure with dumping the 4,000 people from Valdez into the MSB.³⁵³

³⁴⁶ R. at ARB007862. (Nov. 5, 2021 Tr. pg. 5).

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² R. at ARB008043. (Nov. 5, 2021 Tr. pg. 186).

³⁵³ R. at ARB008046. (Nov. 5, 2021 Tr. pg. 189).

235. After further discussion, the Board moved the revised v. 4, renamed Board consensus v. 7, as the final map.³⁵⁴ However, Member Marcum objected, because she felt there were parts of the map that were not the best that they could be, so she could not vote in favor of the map.³⁵⁵

236. Unlike in past redistricting processes, while the Board engaged in discussion, the Board failed to make any findings on the record.³⁵⁶ While this is not required, the record demonstrates nothing was locked in until the final vote, and the Board failed to follow the Constitutional processes.³⁵⁷

TESTIMONY

DEPOSITION OF MELANIE BAHNKE

237. Member Bahnke testified that she understood the Board's constitutional mandates of mapping to mean they needed to end up with a product that is compact, contiguous and socioeconomically integrated, and after all of that is done, to also test the map against the VRA.³⁵⁸

³⁵⁴ R. at ARB008124. (Nov. 5, 2021 Tr. pg. 267).

³⁵⁵ *Id.*

³⁵⁶ Ex. 6008. In 2013, the Board issued the 2013 Proclamation of Final Redistricting and Accompany Findings. (emphasis added).

³⁵⁷ R. at ARB009347. (Nov. 4, 2021 Tr. pg. 177).

³⁵⁸ Bahnke Deposition, PG. 18, l. 23 – pg. 19, l. 3.

238. It was not until she was questioned about how population is factored in that she indicated that the Board had a duty to get as close as practicable to the target population of 18,335 and try and minimize deviation.³⁵⁹

239. Member Bahnke noted the specific deliberation and consideration given to the resolution received from the Fairbanks North Star Borough, directing that they wanted their borough boundary to be broken in an effort to reduce population to achieve as close as possible one person/one vote.³⁶⁰

240. Member Bahnke acknowledged that it was Chair Binkley's position initially to keep the Fairbanks North Star Borough intact and that he was opposed to breaking the borough boundary until the borough itself passed the resolution.³⁶¹

241. Member Bahnke noted that the ANCSA regions are socioeconomically integrated, because the corporations are major economic engines in the state, and they have shareholders that are predominately from specific geographic parts of the state.³⁶² This was her justification for considering ANCSA boundaries where there were no borough boundaries.³⁶³

³⁵⁹ PG. 155, l. 18 – 22.

³⁶⁰ PG. 24, l. 7-11.

³⁶¹ PG. 26, l. 15-21.

³⁶² PG. 56., l. 3-18.

³⁶³ *Id.*

242. Member Bahnke described relative socioeconomic integration to mean where people live together, work together, use the same school districts and hub communities, as well as whether they were rural versus urban communities.³⁶⁴

243. Member Bahnke acknowledged the clear guidance to minimize breaking municipal and borough boundaries.³⁶⁵

244. Member Bahnke confirmed that where there is a borough line and an ANCSA line, that the borough line should take precedence.³⁶⁶

245. Member Bahnke testified that it would not be correct to bust a borough in order to honor an ANCSA boundary.³⁶⁷

246. ANCSA boundaries are just one factor to consider, and those boundaries have no greater status than any other socioeconomic factor.³⁶⁸

247. Member Bahnke testified that when considering the issue of gerrymandering, you have to focus on outcome not intent, because there is no metric for intent.³⁶⁹

248. Member Bahnke also testified that you have to consider the whole state and cannot consider one community's bidding over another.³⁷⁰

³⁶⁴ PG. 194, l. 17-24.

³⁶⁵ PG. 58, l. 19-22.

³⁶⁶ PG. 58, l. 23 - pg. 59, l. 1.

³⁶⁷ PG. 66, l. 14-17.

³⁶⁸ PG. 59, l. 9-15.

³⁶⁹ PG. 19, l. 22 – pg. 20, l. 3.

³⁷⁰ PG. 159, L. 2 -8.

249. Member Bahnke demonstrated by her testimony that instead of considering relative socioeconomic integration, the Board misapplied priorities by placing socioeconomic integration above all other factors, and gave more weight to some testimony over others. One specific example was the choice to remove Cantwell from the Denali Borough by drawing the odd shaped appendage of District 36 solely based on testimony about it being more socioeconomically integrated with the communities in the rural interior district outside of the Denali Borough.³⁷¹

250. In stark contrast to her decision about Cantwell, Member Bahnke indicated that the Board has to balance compactness and contiguity with socioeconomic integration, and that the Board is not charged with picking the best pairing when referring to the pairing of Valdez and the MSB.³⁷²

251. When discussing deviation, Member Bahnke testified that there is no ideal percentage, but that it is comparative and you have to look at the big picture.³⁷³

252. Member Bahnke discussed that the Fairbanks North Star Borough was a challenge, because Chairman Binkley was from Fairbanks and was not initially in favor of splitting the boundary.³⁷⁴

³⁷¹ PG. 73, l. 24 – pg. 74, l. 5.

³⁷² P. 93, l. 25 – pg. 94, l. 8.

³⁷³ PG. 156, l. 24 – pg. 157, l. 1-4.

³⁷⁴ PG. 166, l. 8 – 13.

253. Member Bahnke testified that it was not until the Board received a resolution from the Fairbanks North Star Borough saying that it must be split, that the Board agreed to do so, because the Board gave that resolution a lot of weight as it came from the people elected by the voters in that area.³⁷⁵

254. Member Bahnke agreed that placing one borough's request over another borough is not appropriate as a board member.³⁷⁶

DEPOSITION OF JOHN BINKLEY

255. Chair Binkley was born and raised in Fairbanks.³⁷⁷

256. Chair Binkley served as the Chair of the Board.³⁷⁸

257. Chair Binkley testified that the first time the Board sat down to work together to draw maps was on September 7, 2021.³⁷⁹

258. Chair Binkley testified that pursuant to the Constitution, the Board was required to adopt one or more proposed plans by September 11, and the Board planned to adopt one or more proposed plans by September 10.³⁸⁰

³⁷⁵ PG. 166, l. 13 – pg. 167, l. 11.

³⁷⁶ PG. 167, l. 22 – 25.

³⁷⁷ Binkley Deposition, PG. 17, l. 14-22.

³⁷⁸ PG. 28, l. 15-19.

³⁷⁹ PG. 33, l. 23 – pg. 34, l. 4.

³⁸⁰ PG. 45, l. 1-14, pg. 46, l. 21 – pg. 47, l. 2.

259. Chair Binkley testified that the Board is entitled to objective and non-financially conflicted counsel with regard to redistricting matters.³⁸¹

260. Chair Binkley understood the obligations of the Board to draw maps with 40 house districts that are compact, contiguous, socioeconomically integrated, and, to the greatest extent practicable, as close to the ideal district size for each of those 40 house districts.³⁸²

261. Chair Binkley believed that none of the factors were more important than the others, but that it is a balance between all four items.³⁸³

262. Chair Binkley opined that all 40 house districts in the final version were districts that were compact, contiguous, and socioeconomically integrated.³⁸⁴

263. Chair Binkley testified that all factors had to be balanced, and provided the example that if a district was not contiguous, it would fail.³⁸⁵

³⁸¹ pg. 60, l. 19-23. Member Binkley indicated that he was not aware that counsel for the Board also represents Ahtna, an entity that was lobbying the Board, specifically with regard to the “Cantwell carve out”. *See generally*, pg. 55-60, pg. 187. Mr. Singer’s representation of Ahtna was confirmed during trial when expert Chase Hensel confirmed he served as an expert for Ahtna, and the attorney he worked with was Matt Singer. Trial Tr. Day 1, pg. 94-95.

³⁸² PG. 63, l. 13-23.

³⁸³ PG. 65, l. 20-25.

³⁸⁴ PG. 71, l. 19-22.

³⁸⁵ PG. 73, l. 34 – pg. 74, l. 7.

264. When asked how he measured socioeconomic integration, Chair Binkley indicated that it is subjective, but there is good guidance, for instance a borough is socioeconomically integrated but when you get into different areas it is a judgment call.³⁸⁶

265. Chair Binkley pointed out that socioeconomic integration cannot come at the expense of compactness, contiguity, or getting too far out of the ideal population.³⁸⁷

266. Chair Binkley felt that if it was just a matter of drawing compact, contiguous districts with the ideal population size, it would not require a Board to conduct redistricting, so in his opinion the tricky factor was socioeconomic integration and that required humans with understanding and knowledge of the state.³⁸⁸

267. Chair Binkley testified that the fact that Alaska has an oil-driven economy is not on its own sufficient socioeconomic integration to draw house districts.³⁸⁹

268. Chair Binkley specifically pointed out that in mapping districts the Board is to “make certain that we don’t, for some political purpose, have an appendage that goes out to capture some – some area for strictly political purposes.”³⁹⁰

269. Chair Binkley was aware of the socioeconomic integration of the Richardson Highway corridor, and he noted that it has historical basis as well.³⁹¹

³⁸⁶ PG. 76, l. 15-22.

³⁸⁷ PG. 215, l. 5-9.

³⁸⁸ PG. 212, l. 18 – pg. 213, l. 10.

³⁸⁹ PG. 79, l. 6-13.

³⁹⁰ PG. 82, l.14-18.

³⁹¹ PG. 116, l. 1-8.

270. Chair Binkley was aware that the final plan of the Board did not connect Valdez with any of the Richardson Highway or Prince William Sound communities, and that he is not aware of any plan in the past which has ever been approved that did not connect Valdez with either the Richardson Highway or Prince William Sound communities.³⁹²

271. Chair Binkley admitted that he tried to keep the Fairbanks North Star Borough wholly within the Borough as a single integrated unit.³⁹³

272. Chair Binkley testified that when the Fairbanks North Star Borough passed its resolution, the resolution was significant and given a lot of weight, and as a result, the Board exported population from Fairbanks into District 36.³⁹⁴

273. Chair Binkley testified that the resolution was taken so seriously because it was passed by the people who represent the Borough, a socioeconomically integrated unit as elected by the people of that area.³⁹⁵

274. Chair Binkley indicated that the resolution from the North Star Borough suggested not overpopulating the districts within the Borough, and instead transferring the population out into a single district, which is what the Board did with the final map.³⁹⁶

³⁹² PG. 121, l. 8-24.

³⁹³ PG. 131, l. 20-23.

³⁹⁴ PG. 132, l. 15 – pg. 133, l. 3.

³⁹⁵ PG. 177, l. 15-22.

³⁹⁶ PG. 140, l. 4-15.

275. Chair Binkley agreed that by shifting that population out of the Fairbanks North Star Borough, approximately 4,000 people, Valdez, also with approximately 4,000 people, could not be included in District 36.³⁹⁷

276. Chair Binkley testified that it was “just math” to move Valdez out of District 36 and combine it with the MSB.³⁹⁸

277. Chair Binkley recalled that there were public discussions in which the Board weighed the general socioeconomic integration of MSB and Valdez but that he did not recall any details about those discussions.³⁹⁹

278. Chair Binkley suggested that Cantwell be carved out of the Denali Borough and placed into District 36 with the only justification being that it improved overall socioeconomic connections based on a request from individuals during public testimony.⁴⁰⁰

279. Chair Binkley acknowledged that the final plan adopted by the Board had each district within the MSB overpopulated over the ideal quotient.⁴⁰¹

280. Despite the weight afforded the resolution from the Fairbanks North Star Borough, Chair Binkley only “vaguely” recalled the presentation by the MSB Manager which included the resolution from the MSB.⁴⁰²

³⁹⁷ PG. 141, l. 13-25.

³⁹⁸ PG. 144, l. 8-17.

³⁹⁹ PG. 151, l. 13 – pg. 152, l. 11.

⁴⁰⁰ PG. 164, l. 22 – pg. 165, l. 6; pg. 183, l. 17-25.

⁴⁰¹ PG. 174, l. 24 – pg. 175, l. 4.

⁴⁰² PG. 176, l. 3 – 16.

281. Chair Binkley was not surprised that the record is basically devoid of any conversation about the resolution presented to the Board by the MSB.⁴⁰³

282. When asked if Chair Binkley recalled anyone from Valdez requesting that the Board pair Valdez with the MSB, he responded that he only recalled testimony requesting that Valdez be paired with the Richardson Highway, not MSB.⁴⁰⁴

283. Conversely, Chair Binkley did not recall anyone from the MSB requesting that the Board pair the MSB with Valdez.⁴⁰⁵

284. Chair Binkley indicated that zero census blocks were not used to make a district look more contiguous, but he acknowledged that there is a significant geographic location with a zero census block between the MSB and Valdez.⁴⁰⁶

285. Chair Binkley acknowledged a sidebar conversation he had with Member Borromeo about the fact that the Board had adopted her legislative pairings for Anchorage and the MSB.⁴⁰⁷

⁴⁰³ PG. 178, l. 11-20.

⁴⁰⁴ PG. 189, l. 8-19.

⁴⁰⁵ PG. 189, l. 20-24.

⁴⁰⁶ PG. 193, l. 8-17.

⁴⁰⁷ PG. 194, l. 9-23.

DEPOSITION OF NICOLE BORROMEIO

286. Member Borrromeo indicated that she was particularly concerned that the districts be compact, contiguous, and socioeconomically integrated, and that she particularly considered that there be socioeconomic integration.⁴⁰⁸

287. Member Borrromeo testified that if Alaskans live, work, and play together, they should be districted together.⁴⁰⁹

288. Member Borrromeo indicated that when the Board was doing its initial mapping work, it kept the Fairbanks North Star Borough intact pursuant to the position of Chair Binkley.⁴¹⁰

289. Member Borrromeo maintained that the Fairbanks North Star Borough was eventually split because other draft plans demonstrated that populations in the interior of the state were as close as practicable to the ideal target population, and failing to acknowledge this and overpopulate the area would violate “one person, one vote”.⁴¹¹

290. Member Borrromeo defined compactness as drawing districts as tight as possible without strange appendages that protrude out from the district and where

⁴⁰⁸ Borrromeo Deposition, pg. 19, l. 5-10.

⁴⁰⁹ PG. 28, l. 5-8.

⁴¹⁰ PG. 112, l. 11-23.

⁴¹¹ PG. 113, l. 16-24.

boundaries can be explained through either geographical features or other clearly identifiable means.⁴¹²

291. Member Borrromeo testified that the only maps adopted within the 30-day constitutional period were Board Maps v. 1 and v. 2.⁴¹³

292. Member Borrromeo indicated that she was the creator of Board Map v. 4, and that she had not shared it with any other board member prior to the meeting on September 20, 2021.⁴¹⁴

293. Member Borrromeo introduced Board Map v. 4 to replace Board Map v. 2, because v. 2 was never a complete build out for her.⁴¹⁵ Board Map v. 2 was created by Member Borrromeo over a lunch hour.⁴¹⁶

294. Member Borrromeo testified that the Board took into account Native populations when drawing its districts.⁴¹⁷

295. When asked what socioeconomic ties were considered when placing Glennallen in District 36 with Holy Cross, Member Borrromeo indicated that the Board considered the ANCSA region ties.⁴¹⁸

⁴¹² PG. 119, l. 8-13.

⁴¹³ PG. 168, l. 5-8.

⁴¹⁴ PG. 50, l. 8-17.

⁴¹⁵ PG. 166, l. 20 – PG. 167, l. 1.

⁴¹⁶ PG. 168, l. 17-18.

⁴¹⁷ PG. 196, l. 5-8.

⁴¹⁸ PG. 132, l. 1-11.

296. Member Borromeo went on to testify that the Board did not have specific conversations about socioeconomic ties between various communities beyond the discussions relating to the ANCSA region ties and presentation.⁴¹⁹

297. In order to create District 36, the Board broke three borough boundaries:the Fairbanks North Star Borough, Denali Borough, and MSB.⁴²⁰

298. Specifically, the Board broke the Denali Borough and MSB boundaries to add Cantwell to District 36.⁴²¹

299. Member Borromeo acknowledged that one possibility would have been to combine Valdez with other Richardson Highway communities up to Fairbanks without breaking into the Denali Borough and MSB boundaries.⁴²²

300. Member Borromeo indicated that she did not review results from prior Redistricting Boards, because she was appointed to the 2020 Redistricting board, and she wanted to receive the 2020 census data and work with the numbers that Alaska has right now.⁴²³

⁴¹⁹ PG. 133, l. 11-22.

⁴²⁰ PG. 136, l. 13-21.

⁴²¹ PG. 137, l. 1.

⁴²² PG. 140, l. 14 – pg. 141, l. 3.

⁴²³ PG. 148, l. 1-12.

301. With regard to population, Member Borrromeo testified that the computer software allowed the Board to see the number of Alaskans being added to each district, and it allowed the Board to see the percentage under and over the ideal district size.⁴²⁴

302. Member Borrromeo did not recall any testimony from any resident of the MSB requesting that they be paired with Valdez.⁴²⁵

303. Member Borrromeo indicated that on Wednesday, November 3, 2021 at 5:02 PM, Member Borrromeo was texting with Nathaniel (“Tanner”) Amdur-Clark, an attorney with the law firm of Sonosky Chambers representing the Doyon Coalition.⁴²⁶ Member Borrromeo was asking Mr. Amdur-Clark if there was case law stating the Board can put Valdez with MSB.⁴²⁷

DEPOSITION OF BETHANY MARCUM

304. Member Marcum understood the Board was expected to adopt a plan for consideration on or before September 11, 2021.⁴²⁸

305. Member Marcum testified that the first time the Board came together to consider a map plan was September 7, 2021, and that prior to that date the meetings were primarily to deal with administrative matters.⁴²⁹

⁴²⁴ PG. 156, l. 1-23.

⁴²⁵ PG. 159, l. 3-7.

⁴²⁶ PG. 162, l. 10-25.

⁴²⁷ *Id.*

⁴²⁸ Marcum Deposition, pg. 13, l. 21-22.

⁴²⁹ PG. 12, l. 15 – pg. 13, l. 5.

306. Member Marcum testified that both Board v.1 and v.2 were adopted on September 9, 2021, and that these were the only plans adopted within the 30 days after receipt of the census data.⁴³⁰

307. Member Marcum confirmed that Board v.1 and v.2 did not have Valdez paired with the MSB.⁴³¹

308. Member Marcum testified that Board v. 4, which was adopted nine days after the 30-day period for adopting plans was the first version that paired Valdez with the MSB.⁴³²

309. Member Marcum testified that the most common explanation the Board referred to when determining if an area was relatively socioeconomically integrated was considering where residents live, work, and play.⁴³³

310. Member Marcum testified that the Board applied prior court guidance which directed that boroughs and cities are assumed to be relatively socioeconomically integrated.⁴³⁴

311. Member Marcum indicated that when you have to cross boundaries to increase population in a house district you have to consider the socioeconomic

⁴³⁰ PG. 25, l. 4-11.

⁴³¹ PG. 20, l. 10-20.

⁴³² PG. 33, l. 5-10.

⁴³³ PG. 143, l. 9-13.

⁴³⁴ PG. 143, l. 21 – pg. 144, l. 4.

considerations, such as where people live, work, and play by looking at the predominant industries, transportation corridors, and infrastructure in place in those areas.⁴³⁵

312. Member Marcum recalled that a majority of the public testimony received by the Board suggested that Valdez was not socioeconomically integrated with the MSB.⁴³⁶

313. Member Marcum indicated that the first and most important socioeconomic consideration of the Board was the transportation link between the MSB and Valdez.⁴³⁷ This is despite the fact that no other communities along the Richardson Highway were included in District 29, only Valdez.⁴³⁸

314. Member Marcum testified that the Board made it a point to not look very carefully at previous plans and to actually use the new official census data as the basis for drawing districts.⁴³⁹

315. Member Marcum expressed concern that the Board would have to look at deviation changes in the districts when it considered placing Valdez within a district, particularly as the MSB has been the fastest growing area, and placing 4,000 people in the MSB would overpopulate the districts.⁴⁴⁰

⁴³⁵ PG. 148, l. 10 – pg. 149, l. 6.

⁴³⁶ PG. 47, l. 4-9.

⁴³⁷ PG. 46, l. 17-22.

⁴³⁸ PG. 100, l. 1-6.

⁴³⁹ PG. 50, l. 3-7.

⁴⁴⁰ PG. 58, l. 2-15.

316. Member Marcum testified that no city or jurisdiction in the state should have priority over any others, that the Board's job was balance, considering the best interests of the state overall.⁴⁴¹

DEPOSITION OF BUDD SIMPSON

317. Member Simpson understood the considerations which are applied to forming the districts to be compact, contiguous, and socioeconomically integrated, and as narrowly as practicable equal to 1/40th of the state population.⁴⁴²

318. Member Simpson indicated that the Board sought to maintain the smallest possible practicable deviation given the other factors when the Board was drawing districts.⁴⁴³

319. Member Simpson testified that it is always important to try to minimize the deviation to the extent practicable.⁴⁴⁴

320. Member Simpson acknowledged that the Board had the responsibility to adopt one or more proposed redistricting plans within 30 days of August 12, 2021.⁴⁴⁵

321. Member Simpson testified that the Board received comments on every version and every iteration of the map throughout the process, and appreciated that the

⁴⁴¹ PG. 70, l. 9-12.

⁴⁴² PG. 148, l. 10-18.

⁴⁴³ PG. 150, l. 2-5.

⁴⁴⁴ PG. 160, l. 5-8.

⁴⁴⁵ Simpson Deposition, pg. 25, l. 10-18.

Board was permitting public comment on evolving maps that constitute a moving target and the challenges that represents.⁴⁴⁶

322. Member Simpson indicated that the Board members were all working on various parts of all the versions with different staff.⁴⁴⁷

323. Member Simpson confirmed that the only plans adopted by the Board during the 30-day constitutional period were Board v. 1 and v. 2.⁴⁴⁸

324. Member Simpson testified it was his sense that Valdez should run up the Richardson Highway, because he understood the argument that it is their transportation link.⁴⁴⁹

325. Member Simpson testified that Valdez is unique and that the Board struggled with how it should be districted.⁴⁵⁰

326. Member Simpson testified that because other decisions were made, decisions had to be made with respect to the placement and matching of Valdez because it does not have enough population to be a district on its own and therefore had to be matched up with some other population.⁴⁵¹

⁴⁴⁶ PG. 43, l. 13 – pg. 44, l. 2.

⁴⁴⁷ PG. 45, l. 3-7.

⁴⁴⁸ PG. 46, l. 2-10.

⁴⁴⁹ PG. 123, l. 21-25.

⁴⁵⁰ PG. 129, l. 11-25.

⁴⁵¹ PG. 130, l. 1-10.

327. Member Simpson indicated that trying to avoid pushing the Valdez population into Fairbanks left the Board with having to put it into the MSB.⁴⁵²

DEPOSITION OF PETER TORKELSON

328. Mr. Torkelson testified to his knowledge of what he saw and participated in during the redistricting process, and that he was not serving in the role of an expert witness in this matter.⁴⁵³

329. Prior to his work with the Board, Mr. Torkelson did not have any experience in geographic information systems.⁴⁵⁴

330. Prior to this redistricting cycle, Mr. Torkelson had never worked with the software program AutoBound or AutoBoundEDGE.⁴⁵⁵

331. Mr. Torkelson testified that his degree is in criminal justice and he has never taken a computer science course.⁴⁵⁶

332. Mr. Torkelson testified that the Board received the legacy formatted data at 9:01 AM on August 12, 2021, and this was the data the Board relied upon when redistricting.⁴⁵⁷

⁴⁵² PG. 34, l. 4-13.

⁴⁵³ PG. 14, l. 19 – pg. 15, l. 17.

⁴⁵⁴ PG. 93, l. 23-25.

⁴⁵⁵ PG. 15, l. 21-24.

⁴⁵⁶ PG. 27, l. 12-25.

⁴⁵⁷ PG. 106, l. 2-7.

333. Mr. Torkelson testified that during the August meetings, the main point was to receive the data, discuss the ways to manage the project, and the ways the members could work on different parts of the state and then be able to bring those pieces of the puzzle together into a cohesive whole without having a lot of conflict at the boundaries, which is a regionalization approach.⁴⁵⁸

334. Mr. Torkelson lacked any expertise in geographic information systems, and this was demonstrated by his testimony with regard to his approach to mapping and the struggles that he suffered in his approach to mapping.⁴⁵⁹

335. His lack of experience was further demonstrated by discussing the shape of the census blocks contained in the MSB, ignoring the fact that the MSB had done significant work with the census to address and identify blocks.⁴⁶⁰

336. Further, Mr. Torkelson indicated that he had no indication of the populations within the census blocks he was identifying as bizarre.⁴⁶¹

337. One of Mr. Torkelson's key mapping challenges was the fact he was learning about the way that census blocks worked for mapping purposes while the Board was already involved in the mapping process.⁴⁶²

⁴⁵⁸ PG. 31, l. 20 – pg. 32, l. 23.

⁴⁵⁹ PG. 47, l. 16 – pg. 48, l. 2.

⁴⁶⁰ PG. 189, l. 5-25; pg. 191, l. 24-pg. 192, l. 3.

⁴⁶¹ PG. 190, l. 16-20.

⁴⁶² PG. 51, l. 2- pg. 190, l. 13.

338. Mr. Torkelson learned during the redistricting process that local governments had an opportunity to provide feedback and obtain improvements to census blocks within their jurisdiction, and in his opinion that had some impact on the final block shapes the Board was dealing with.⁴⁶³

339. Mr. Torkelson was aware the MSB had participated in the process of reviewing census blocks, which was a relief for the Board as they did not experience the same issues in the MSB as they did in other areas of the state.⁴⁶⁴

340. Mr. Torkelson was not aware of any other local government that participated in the pre-census review process.⁴⁶⁵

341. Mr. Torkelson defined compactness as the tightest, cleanest shape that encompasses a socioeconomically integrated unit and follows some natural geographic boundaries to the degree possible, while not including any odd protrusions.⁴⁶⁶

342. Mr. Torkelson indicated that if a district lacks odd extensions, no octopus effect, it meets the definition of compactness.⁴⁶⁷

343. Mr. Torkelson defined contiguity as sharing a common boundary, a border, so the areas touch.⁴⁶⁸

⁴⁶³ PG. 59, l. 10-25.

⁴⁶⁴ pg. 62, l. 24 – pg. 63, l. 6.

⁴⁶⁵ pg. 63, l. 7-9; pg. 180, l. 4-10.

⁴⁶⁶ pg. 81, l. 8-12.

⁴⁶⁷ pg. 84, l. 9-13.

⁴⁶⁸ pg. 92, l. 7-10.

344. Mr. Torkelson indicated that his definition of contiguity means you can travel from any one point to any other point in the district without leaving the district.⁴⁶⁹

345. When defining relative socioeconomic integration, Mr. Torkelson indicated the key word was relative, as in relative to other options that are possible, because he understood socioeconomic integration is derived from where people live, work, and play together.⁴⁷⁰

346. Mr. Torkelson presumed that areas where the populations did not live, work, and play together could be considered socioeconomically integrated if they are similar.⁴⁷¹

347. Mr. Torkelson could not identify anywhere in the record where the Board deliberated the socioeconomic integration between Valdez and the MSB. He could only recall that there was some discussion that they currently vote together given the prior redistricting map.⁴⁷²

348. Mr. Torkelson stated that during the public sessions, there was persistent confusion with the numbering of districts given the various maps being considered by the Board.⁴⁷³

⁴⁶⁹ pg. 93, l. 10-13.

⁴⁷⁰ pg. 96, l. 8-24.

⁴⁷¹ PG. 98, l. 12-17.

⁴⁷² PG. 100, l. 6 – pg. 102, l. 16.

⁴⁷³ PG. 112, l. 4-9.

349. Mr. Torkelson testified that there was intense public pressure to obtain the deviation tables in the first week of November.⁴⁷⁴

350. Mr. Torkelson understood that for the past decade, Districts 37, 38, 39, and 40 were protected VRA districts, and the current Board retained those district numbers, as retrogression needed to be looked at very closely in those districts.⁴⁷⁵

351. Mr. Torkelson included items in his affidavit for the trial that were not considered by the Board to attempt to increase the appearance of socioeconomic integration between Valdez and the MSB.⁴⁷⁶

352. Following receipt of the resolution from the Fairbanks North Star Borough, Mr. Torkelson worked with Chair Binkley to reshape the districts in order to move approximately 4,000 people out of the districts to get closer to the “one person, one vote” request of FNSB.⁴⁷⁷

353. Mr. Torkelson testified that the deviation table which was posted to the public website with the final plan was not correct, as there was a renumbering error that led to district populations and deviations being identified with incorrect district numbers.⁴⁷⁸

⁴⁷⁴ PG. 113, l. 1-14.

⁴⁷⁵ PG. 124, l. 13-23.

⁴⁷⁶ PG. 131, l. 22 – pg. 132, l. 14.

⁴⁷⁷ PG. 156, l. 17 – pg. 158, l. 24.

⁴⁷⁸ PG. 165, l. 1-12.

354. This incorrect information particularly impacted the districts that sit within the MSB.⁴⁷⁹

355. Mr. Torkelson acknowledged that the Board overpopulated every district within the MSB.⁴⁸⁰

356. Despite an attempt to confuse the issues, Mr. Torkelson admitted that future populations of the MSB do not need to be considered, and that current data demonstrates the districts within the MSB are overpopulated.⁴⁸¹

TRIAL TESTIMONY - EDNA DEVRIES

357. Edna DeVries is a resident of Palmer, Alaska, located within the MSB, and has been a resident of Palmer for 44 years.⁴⁸² She is the Mayor of the MSB and has previously been elected to serve as a State Senator, MSB Assembly Member, Mayor of Palmer, and Palmer City Council Member.⁴⁸³

358. Mayor DeVries testified that she also has decades of business experience in the MSB from owning small businesses and through real estate.⁴⁸⁴

359. Mayor DeVries testified that MSB is a relatively integrated socioeconomic area home to many citizens who commute to work to areas including Anchorage and the

⁴⁷⁹ PG. 168, 19-25.

⁴⁸⁰ PG. 197, 1. 13-21.

⁴⁸¹ PG. 198, 1. 14-22.

⁴⁸² DeVries Affidavit, para. 2.

⁴⁸³ DeVries Affidavit, para. 3-4.

⁴⁸⁴ DeVries Affidavit, para. 5.

North Slope.⁴⁸⁵ However, there are multiple other governments within the MSB, including the City of Palmer, the City of Wasilla, and the city of Houston.⁴⁸⁶ Therefore, there are areas within the MSB that are more socioeconomically integrated than others.⁴⁸⁷

360. Mayor DeVries confirmed that MSB borders the Denai Borough but is separated geographically by a mountain range from the City of Valdez.⁴⁸⁸

361. Mayor DeVries testified that while she served as a State Senator, Valdez was included with MSB for its representation even though Valdez is a coastal community with vastly different economic drivers, needs, and desires than MSB.⁴⁸⁹ For instance, while MSB is concerned about its access to Anchorage on the Glenn Highway and north on the Parks Highway, Valdez is concerned with the Alaska Marine Highway and the Richardson Highway.⁴⁹⁰

362. Mayor DeVries testified that Valdez is focused on its export duties as home to the end of the Trans-Alaska Pipeline.⁴⁹¹

⁴⁸⁵ DeVries Affidavit, para. 6-7.

⁴⁸⁶ Trial Tr. Day 2 pg. 187.

⁴⁸⁷ *Id.*

⁴⁸⁸ DeVries Affidavit, para. 8.

⁴⁸⁹ DeVries Affidavit, para. 9-10.

⁴⁹⁰ *Id.*

⁴⁹¹ DeVries Affidavit, para. 11.

363. Mayor Devries testified that Valdez is also interested in commercial fishing, while MSB is more of a bedroom community with people working on the North Slope and in Anchorage.⁴⁹²

364. Mayor DeVries testified that Valdez and the MSB are not socioeconomically integrated, so they should not have been districted together.⁴⁹³

365. Mayor DeVries testified that for purposes of redistricting, combining the MSB with the Denali Borough to apportion six districts provides for contiguous and compact districts over a relatively socioeconomic area due to the geography allowing for a connection between MSB and the Denali Borough by the Parks Highway.⁴⁹⁴

TRIAL TESTIMONY - MICHAEL BROWN

366. Michael Brown is a resident of Palmer, Alaska within the MSB and according to the Final Plan adopted by the Board, and his residence lies within District 29.⁴⁹⁵

367. Mr. Brown testified that he currently serves as the Manager of the MSB, which is the MSB's chief administrative officer responsible for the proper administration of all MSB affairs and implementation of MSB policy as established by the Assembly.⁴⁹⁶

⁴⁹² Trial Tr. Day 2 pg. 175.

⁴⁹³ *Id.* pg. 176.

⁴⁹⁴ DeVries Affidavit, para. 12-13.

⁴⁹⁵ Brown Affidavit, para. 2.

⁴⁹⁶ Brown Affidavit, para. 3.

368. Mr. Brown testified that on September 7, 2021, the MSB Assembly authorized submittal of a proposed plan to the Board which recognized the target district population based on the 2020 Census would make MSB entitled to 5.84 district house seats.⁴⁹⁷

369. As the Manager of the MSB, Mr. Brown was directed by the MSB Assembly to develop and present a proposed plan that allocated the MSB six house districts, partnering with the Denali Borough to minimize districts that crossed other Borough boundaries.⁴⁹⁸

370. On September 14, 2021, Mr. Brown submitted written testimony to the Board which included a proposed plan and notified the Board that MSB was amenable to the Boards adopted plan v2.⁴⁹⁹

371. Through Mr. Brown, the MSB notified the Board that if population needed to be gathered outside the Borough boundary, that MSB supported including the population to the east where the district does not extend into a separate municipality or other political boundary.⁵⁰⁰

⁴⁹⁷ Brown Affidavit, para. 4.

⁴⁹⁸ Brown Affidavit, para. 4.

⁴⁹⁹ Brown Affidavit, para. 5.

⁵⁰⁰ Brown Affidavit, para. 6.

372. Mr. Brown provided testimony to the Board on multiple occasions, including when the Board visited Palmer on October 25, 2021, where he reiterated MSB’s desire to be paired with the Denali Borough.⁵⁰¹

373. The MSB assembly members were in favor of being paired with the Denali Borough, and the Denali Borough Mayor, along with others, testified that they were in favor of being paired with the MSB.⁵⁰²

374. The MSB proposed a redistricting plan that incorporated the entirety of the MSB, the Denali Borough, and reaching just outside MSB to include communities on the Glenn Highway in its eastern district.⁵⁰³

375. Statistically, the MSB proposal allowed the Board to honor the corporate boundaries while at the same time adding enough population to the MSB to justify six full House seats.⁵⁰⁴ This proposal provided almost exact population with very small deviation.⁵⁰⁵ These deviations were significantly smaller than those included in the final plan.⁵⁰⁶

376. Mr. Brown highlighted to the Board that partnering with Valdez would fail to meet the constitutional requirements, as it would not be considering the interests of the

⁵⁰¹ Brown Affidavit, para. 7.

⁵⁰² Trial Tr. Day 2 pg. 198.

⁵⁰³ Brown Affidavit, para. 8.

⁵⁰⁴ Trial Tr. Day 2 pg. 196.

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.* pg. 197.

individuals residing in MSB and would only be taking population from MSB to make another district whole.⁵⁰⁷ Mr. Brown stated that the Board failed to consider the socioeconomic integration of the communities.⁵⁰⁸

377. The public input to the Board from the MSB was opposed to the idea of being paired with Valdez.⁵⁰⁹ The public input from Valdez was in agreement, that Valdez and the MSB were not a good pairing.⁵¹⁰

378. As a resident of District 29, which has been included with Valdez, Mr. Brown does not have the opportunity to vote with fellow Palmer residents like the residents of District 25 do and is instead combined with residents of Valdez with vastly different priorities which dilute his vote and representation.⁵¹¹ Because the interests of Valdez and the MSB are so varied, when you have a House District split like that, voters are not adequately represented, because the interests of those communities are so different.⁵¹²

379. In House District 29, as included in the Final Plan, the portions of the MSB combined with Valdez share no social concerns, political needs, are geographically divided, culturally and historically distinct, have no transportation links, and no shared

⁵⁰⁷ Brown Affidavit, para. 9.

⁵⁰⁸ Trial Tr. Day 2 pg. 199

⁵⁰⁹ Trial Tr. Day 2 pg. 197.

⁵¹⁰ *Id.* pg. 198.

⁵¹¹ Brown Affidavit, para. 10.

⁵¹² Trial Tr. Day 2 pg. 223.

economic activities, meaning the District ignores logical, municipal, and natural boundaries.⁵¹³

380. In order to drive from Valdez to the population it is districted within the MSB, one would have to drive over 120 miles out of the district in order to get back into the district.⁵¹⁴

381. The MSB is located on the railbelt and road system unlike Valdez, which is a coastline community that relies heavily on maritime economics and infrastructure including significant interest in the marine highway system that MSB has little to no interest in.⁵¹⁵ Valdez is not on the railbelt.⁵¹⁶ The residents of the suburbs of Wasilla and Palmer do not live, work, or play with the residents of the City of Valdez.⁵¹⁷

382. A large portion of the revenue for the City of Valdez comes from the ad valorem tax revenue the Trans Alaska Pipeline system.⁵¹⁸ The MSB receives no significant revenue from ad valorem taxes associated with the Trans Alaska Pipeline system.⁵¹⁹

⁵¹³ Brown Affidavit, Para. 11.

⁵¹⁴ Trial Tr. Day 2 pg. 200.

⁵¹⁵ Brown Affidavit, Para. 12.

⁵¹⁶ Trial Tr. Day 2 pg. 190.

⁵¹⁷ *Id.* pg. 203.

⁵¹⁸ *Id.* pg. 194.

⁵¹⁹ *Id.* pg. 195.

383. There is a natural connection between Valdez and the communities on the Richardson Highway, and there are a lot of folks from Fairbanks that visit Valdez.⁵²⁰ The Port of Valdez is the port to the interior, up the Richardson Highway to Fairbanks.⁵²¹

384. The MSB is socioeconomically integrated with the Denali Borough due to its connection on the Parks Highway and the recreational and tourism interests they share as a result.⁵²² In addition, there are a lot of connections between what occurs in the Denali Borough and communities in the northern MSB, such as Talkeetna.⁵²³

385. When the MSB is paired with the Denali Borough, it provides for districts that are contiguous and compact, and because each Borough is socioeconomically integrated, the resulting districts are socioeconomically integrated.⁵²⁴

386. The United States census data demonstrates that over the past 30 years, the population in the MSB has steadily increased. In 1990, Alaska had a population of 550,043 residents with 39,683 residents residing in the MSB. In 2000, Alaska had a population of 626,932 residents, with 59,332 residents residing in the MSB, representing 26 percent of the statewide population growth. In 2010, Alaska had a population of 710,231 residents, with 88,995 residents residing in the MSB, representing 36 percent of the statewide

⁵²⁰ *Id.* pg. 191.

⁵²¹ *Id.*

⁵²² Brown Affidavit, Para. 13.

⁵²³ Trial Tr. Day 2 pg. 189-190.

⁵²⁴ Brown Affidavit, Para. 13.

population growth. In 2020, Alaska had a population of 733,391 residents, with 107,081 residents residing in the MSB, representing 78 percent of the statewide population growth.⁵²⁵

387. The Board’s Final Plan created seven House districts statewide that are overpopulated by over 2% deviation over the ideal quotient, and five of those seven districts are located in the MSB.⁵²⁶

388. The districts in the MSB in total have a nearly 14% aggregate overpopulation for an area that accounted for 78% of the State’s total population growth in the past decade, whereas Anchorage was underpopulated by an aggregate 10% deviation and is a community that lost population over the past decade.⁵²⁷

389. As a voter, Mr. Brown’s vote is further diluted given the significant overpopulation of each District that sits within the MSB.⁵²⁸

390. The Board had more viable options that represent greater socioeconomic integration than the option ultimately selected, the MSB plan, as well as Board v. 2 were examples of that.⁵²⁹ These plans demonstrated that there were clearly options that more closely aligned to what the MSB assembly identified as having better socioeconomic

⁵²⁵ Brown Affidavit, Para. 14.

⁵²⁶ Brown Affidavit, Para. 15.

⁵²⁷ Brown Affidavit, Para. 15.

⁵²⁸ Brown Affidavit, Para. 15.

⁵²⁹ Trial Tr. Day 2 pg. 209.

integration and honored that.⁵³⁰ The MSB recognized that there was a need to go outside the corporate boundary to the east, but only to a certain degree.⁵³¹

391. Mr. Brown recognized that in the final plan, the MSB was paired with the Denali Borough with the exception of the “Cantwell cutout”.⁵³² Mr. Brown advised that the “Cantwell cutout” by the Board crossed not only into the Denali Borough but also crossed the corporate boundary of the MSB.⁵³³

TRIAL TESTIMONY - STEVE COLLIGAN

392. Steve Colligan was presented as an expert based on his significant experience in geographic information systems, particularly with regard to working with GIS departments in local governments in Alaska and due to his experience with the Alaska Redistricting Board and process.⁵³⁴

393. Mr. Colligan is an Alaska resident, was born and raised in Fairbanks, and has resided in Wasilla within the Matanuska-Susitna Borough since 1999.⁵³⁵

⁵³⁰ *Id.* pg. 209-210.

⁵³¹ *Id.*

⁵³² Trial Tr. Day 2 pg. 229.

⁵³³ *Id.*

⁵³⁴ Colligan Affidavit, para. 3-4, 6-12, 14-19.

⁵³⁵ Colligan Affidavit, para. 5.

394. Mr. Colligan was elected as an assemblyman on the MSB Assembly in October 2011, and served two terms representing the people of Region 4 of the greater Wasilla area.⁵³⁶

395. E-Terra was hired in 2018 as a Consultant to the MSB in order to process and participate in Census Data development after decades of continual growth in the MSB. E-Terra was retained as part of a process the MSB was engaged in to directly coordinate with its cities and the Census Bureau.⁵³⁷

396. E-Terra provided MSB assistance during its pre-Census work, including its consultation regarding the redistricting process and assistance in creating a submission map that supported MSB's pre-Census work.⁵³⁸

397. In the most recent Census, the MSB demonstrated the fastest growing population in the State of Alaska, with a population of 107,081, an increase of 18,086 residents, representing 78 percent of the Statewide population growth.⁵³⁹

398. Based on the population of 107,081, and the quotient of 18,335, the MSB is entitled to 5.84 House Districts.⁵⁴⁰

⁵³⁶ Colligan Affidavit, para. 13.

⁵³⁷ Colligan Affidavit, para. 20.

⁵³⁸ Colligan Affidavit, para. 21-30, 33.

⁵³⁹ Colligan Affidavit, para. 31.

⁵⁴⁰ Colligan Affidavit, para. 32.

399. The final map for the MSB adopted in the Board’s Proclamation Plan on November 10, 2021, contained districts that are not compact or contiguous, and have unconstitutional population deviations compared to other regions which were entirely avoidable as observed in earlier versions of the maps.⁵⁴¹

400. For example Anchorage, which has the largest concentration of districts but was drawn with overall negative deviations, rather than neutral or positive deviations, in comparison to the MSB which had the fastest growing population in the State but was drawn with positive deviations in every district.⁵⁴²

401. The Board’s Proclamation Plan overpopulated the MSB by almost 14% across all six districts, or 2.5% in each of the six House Districts, which is further compounded, as each of the related Senate seats are then overpopulated, particularly in urban Wasilla where it is over 5%.⁵⁴³

402. Mr. Colligan opined that the MSB should be treated no different than Anchorage, deviations should be less than half a percent particularly in the urban core area.⁵⁴⁴ Software tools allow you to achieve these type of low deviations.⁵⁴⁵

⁵⁴¹ Colligan Affidavit, para. 34.

⁵⁴² Colligan Affidavit, para. 35.

⁵⁴³ Colligan Affidavit, para. 36.

⁵⁴⁴ Trial Tr. Day 2 pg. 359.

⁵⁴⁵ *Id.* pg. 412.

403. When conducting redistricting, and drawing reasonable House District boundaries, overpopulating a district creates an under-influence and vice versa, if you underpopulate there is more undue influence at the legislative level, and then that's doubled or further complicated at the senate seat level.⁵⁴⁶ The overpopulation of the MSB, when there were at least no less than four other plans and ideas submitted to the Board during the process, which did not overpopulate the MSB, is a huge disservice to the MSB and also affects Valdez.⁵⁴⁷

404. The Board's Proclamation Plan left the MSB with an excess population of just over 2,500 people.⁵⁴⁸

405. The MSB's submission of proposed districts took into consideration the socio-economics of the region to create compact and contiguous districts that also reflected the huge population growth observed in the Census data, and more fully aligned with the principles of "one person, one vote" by having deviations of -0.08 across all districts.⁵⁴⁹

406. The Board's Proclamation Plan does not show a similar consideration of the MSB districts, and Mr. Colligan provided a series of maps and examples illustrating the deficiencies of the Board's final MSB districts.⁵⁵⁰

⁵⁴⁶ Trial Tr. Day 2 pg. 348.

⁵⁴⁷ *Id.* pg. 348-349.

⁵⁴⁸ Colligan Affidavit, para. 36.

⁵⁴⁹ Colligan Affidavit, para. 37-38.

⁵⁵⁰ Colligan Affidavit, para. 39-65.

407. Mr. Colligan illustrated that the outer areas of the City of Palmer had been cut into 4 districts which paired areas serviced by Palmer, such as Palmer’s hospital and Colony Middle/High School, with Wasilla districts.⁵⁵¹

408. This is important as the residents of the greater Palmer area, which receive services from the City of Palmer, send their children to Palmer schools, and are citizens of the City of Palmer, should be represented by a voting district for the City of Palmer, not the City of Wasilla.⁵⁵²

409. Mr. Colligan testified that the District 25 pairing of Butte, Lazy Mountain, and Knik with the City of Palmer did not reflect the testimony of those rural citizens who testified they have more in common with Sutton and communities along the Glenn Highway.⁵⁵³

410. Mr. Colligan pointed out that although District 29 appears to be contiguous with Valdez, the Board actually drew the land area for District 29 south of the Glenn and Richardson Highways, which placed the road system in District 36 and orphaned Valdez at the southernmost end of the district.⁵⁵⁴

⁵⁵¹ Colligan Affidavit, para. 40-43.

⁵⁵² Colligan Affidavit, para. 44.

⁵⁵³ Colligan Affidavit, para. 45-46.

⁵⁵⁴ Colligan Affidavit, para. 47-48, 50.

411. District 29 is neither compact nor contiguous as MSB residents are not joined with Valdez by the road system.⁵⁵⁵

412. Further, District 29 is neither compact nor contiguous due to the large swath of uninhabited and unpassable land between Valdez and Sutton showing there is no population connecting Valdez and the MSB communities in District 29.⁵⁵⁶

413. Mr. Colligan opined that testimony from the Board stating District 29 is drawn substantially similar to District 9 from the 2013 Redistricting Proclamation, with respect to its treatment of Valdez, is incorrect because District 9 was drawn to include communities along the Richardson Highway.⁵⁵⁷ The difference is in District 9 the transportation connection all the way along the Richardson Highway and the Glenn Highway made that connection, now Valdez is completely isolated.⁵⁵⁸ If you zoom out of the map it looks like it includes the road system in the population, in fact, it does not.⁵⁵⁹

414. The MSB has grown since the last redistricting cycle by over 18,000 people, and that alone changes the dynamic between the regions.⁵⁶⁰ And it is not just about

⁵⁵⁵ Colligan Affidavit, para. 49.

⁵⁵⁶ Colligan Affidavit, para. 51-52.

⁵⁵⁷ Colligan Affidavit, para. 50.

⁵⁵⁸ Trial Tr. Day 2 pg. 345.

⁵⁵⁹ *Id.* pg. 347.

⁵⁶⁰ *Id.* pg. 346.

comparing one area to another, the real job of the Board is to look at the new data and reassess the associations.⁵⁶¹

415. District 29 creates a huge geographical disconnect between its residents and the offices of their elected official, and is an obvious indication of a district not being compact or contiguous when its voters must leave their district and traverse through a different district in order to reach their representatives.⁵⁶² This analysis is based on looking at the population and census blocks, it paints a completely different picture of connectivity and contiguity.⁵⁶³

416. There is competition for resources from the State between Valdez and the MSB, particularly because they have things like competing ports.⁵⁶⁴

417. District 29 orphans Valdez from the Prince William Sound community, and the Board did not include it in the pipeline district.⁵⁶⁵

418. District 28 is an unnecessarily irregularly shaped, sideways district, which does not reflect the best option for the region in terms of contiguity and compactness, and disregards the historical connections between the City of Wasilla and Tanaina by not pairing the areas together.⁵⁶⁶

⁵⁶¹ *Id.*

⁵⁶² Colligan Affidavit, para. 53-54.

⁵⁶³ Trial Tr. Day 2 pg. 382.

⁵⁶⁴ Trial Tr. Day 2 pg. 346.

⁵⁶⁵ *Id.* pg. 348.

⁵⁶⁶ Colligan Affidavit, para. 55-57.

419. Meadow Lakes is more socioeconomically integrated with the City of Houston than with the City of Wasilla, which is the area that the Board paired it with in District 27.⁵⁶⁷

420. The Board combining Big Lake, almost the entire Knik Goose Bay Road, and Fairview areas into District 26 was not proper because there are other, more practical pairing that provide for greater socio-economic integration.⁵⁶⁸

421. When drawing District 30, the Board cut both the MSB and Denali borough boundaries in order to allocate the residents of Cantwell into District 36.⁵⁶⁹

422. Mr. Colligan opined that in order to make the Cantwell appendage less harsh and more geographically acceptable, the Board allocated Census blocks from the MSB into the Cantwell area, as well as removed the road system and some residents from the northernmost MSB boundary.⁵⁷⁰

423. The removal of the road system creates another situation where a voter would have to leave their district to cross District 36 before reentering their district to reach their representative.⁵⁷¹

⁵⁶⁷ Colligan Affidavit, para. 58-59.

⁵⁶⁸ Colligan Affidavit, para. 60-62.

⁵⁶⁹ Colligan Affidavit, para. 63.

⁵⁷⁰ Colligan Affidavit, para. 63-34.

⁵⁷¹ Colligan Affidavit, para. 64.

424. Cantwell has been historically paired with the Denali Borough due to Cantwell’s socioeconomic integration with the communities along the Parks Highway and the Denali Borough, and breaking the Denali Borough and MSB boundaries to remove Cantwell into the interior district is not proper.⁵⁷² Mr. Colligan cannot look at the map with a straight face to see the “Cantwell carve out”.⁵⁷³ Mr. Colligan testified that the Board peeled out an appendage through the top of the borough to reach over and grab Cantwell.⁵⁷⁴

425. Mr. Colligan described the strange appendage that he referred to as the “Cantwell carve out” as offensive.⁵⁷⁵ Mr. Colligan testified that it is not compact, and it split the boundaries of two boroughs in order to get 200 people.⁵⁷⁶ He explained to have to go through the MSB to get population actually within the Denali Borough, and strip that out just for the rural district and take it off the road system is over the top.⁵⁷⁷

426. In Mr. Colligan’s analysis and opinion, the Board had no defensible justification for overpopulating the MSB, especially given the strength of the technology used today to draw boundaries which allows for more practicable review and lesser deviations.⁵⁷⁸

⁵⁷² Colligan Affidavit, para. 65.

⁵⁷³ Trial Tr. Day 2 pg. 351.

⁵⁷⁴ *Id.* pg. 353.

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.* pg. 441.

⁵⁷⁸ Colligan Affidavit, para. 66.

427. Mr. Colligan concluded that the Board should be forced to reconsider the previous submittal from the MSB, which was the result of significant work conducted over the last five years in preparation of the 2020 census and subsequent redistricting process, because its proposed districts demonstrate a consensus of how its residents live, work, and recreate.⁵⁷⁹

428. The Board's Proclamation Plan improperly split boundaries making House Districts that were not compact or contiguous, failed to account for socio-economic integration, and created the egregious underrepresentation of the MSB, which is the State of Alaska's fastest growing region.⁵⁸⁰

429. Mr. Colligan concluded that the Board failed to treat the State in an even-handed manner when they are charged with looking at the State as a whole, and not favoring one area over another. Particularly as something may seem fair when considering only a singular House district or region, but once the entire State is considered it turns out not to be equitable.⁵⁸¹

430. Mr. Colligan observed early in the redistricting process that directives asserted by Board members, the Board chairman, and through guidance of Board legal counsel, regarding levels of acceptable deviation per district, were unsubstantiated, and in

⁵⁷⁹ Colligan Affidavit, para. 67.

⁵⁸⁰ Colligan Affidavit, para. 68.

⁵⁸¹ Colligan Affidavit, para. 69.

his experience, not legally defensible as compact, contiguous, or socio-economically integrated.⁵⁸²

431. The Board did not have the geographic expertise to look at other data available to them, especially in the urban areas.⁵⁸³

432. There was a story perpetuated by the Board about the flexibility of drawing maps due to the fact there used to be 40-some thousand census blocks, and now there is only approximately 23,000 census blocks.⁵⁸⁴ The fact is, the Census cleaned up the map by deleting a bunch of zero slivers and stuff on roadways and streams that formed a bunch of old, inaccurate maps.⁵⁸⁵

433. Mr. Colligan observed plenty of comments from Board members when mapping in Anchorage, for instance, would click on a block and all of the sudden their district would blow up in population because they could not see that they clicked on a small block of 800 people.⁵⁸⁶ When drawing maps it is hard to follow roads and features without having and seeing each little cell block as density below so you are not surprised when you

⁵⁸² Colligan Affidavit, para. 70.

⁵⁸³ Trial Tr. Day 2 pg. 362.

⁵⁸⁴ Trial Tr. Day 2 pg. 430.

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.*

click on the block.⁵⁸⁷ The underlying data points need to be considered when building districts.⁵⁸⁸

434. The Board considered the VRA first and then turned to the necessary factors in Alaska, thus turning the process on its head, and went to great lengths to maintain the boundaries of FNSB.⁵⁸⁹ The Board locked in the VRA analysis before really analyzing the bigger picture of rural Alaska.⁵⁹⁰

435. The Doyon coalition got a majority of what they were looking for in rural Alaska, even though they did not have a majority of population to make those demands.⁵⁹¹

436. Given the choice between adopted board plan v. 1 and board plan v. 2, MSB provided public comment that ARB v. 2 was the closer of the two at addressing the MSB's goals of having 6 districts within MSB, which included the Denali Borough, did not encompass the areas to the South in Anchorage, and did not include Valdez. This map includes Valdez with the Pipeline corridor along with Glennallen and the Richardson Highway communities.⁵⁹²

437. Mr. Colligan observed that the Board's Final Proclamation Plan is completely different to the proposed maps v. 1 and v. 2 because it severely overpopulates

⁵⁸⁷ *Id.*

⁵⁸⁸ *Id.* pg. 431.

⁵⁸⁹ Colligan Affidavit, para. 71-72.

⁵⁹⁰ Trial Tr. Day 2 pg. 427.

⁵⁹¹ Trial Tr. Day 2 pg. 351.

⁵⁹² Colligan Affidavit, para. 73.

the MSB districts, includes Valdez, eliminates Glennallen and the other communities in between the MSB and Valdez on the Richardson Highway, and in the core area of the MSB it also significantly changes the Greater Palmer, Wasilla, and Houston areas. All of which were decided without further public comment or consideration of the changes to the area and subsequent statewide impacts.⁵⁹³

438. Mr. Colligan opined that the acceptable total population in urban MSB should have been within the range of plus or minus 500 persons borough wide, or 60-90 persons in each district, given the mapping technology in use and the other plans reviewed by the Board – at least four of which demonstrated that 1% deviation is possible – and that this level of deviation was achievable with all other constitutional criteria for redistricting properly considered.⁵⁹⁴

439. The Board’s Chairman established early on that he would not support a plan where the Fairbanks boundary would be broken, and asserted this before any meaningful analysis and process was considered by ARB, which established a discussion based around wants, not the actual population gains and losses of each census area.⁵⁹⁵

440. The Chairman did not agree that Fairbanks could be split until November 3 or 4, 2021, allowing the Board only one or two days to consider all the options that going

⁵⁹³ Colligan Affidavit, para. 74.

⁵⁹⁴ Colligan Affidavit, para. 75-76.

⁵⁹⁵ Colligan Affidavit, para. 77.

into Fairbanks would represent.⁵⁹⁶ His agreement came after a resolution from Fairbanks, completely converse to the MSB who declared from the very beginning of the process, and even before redistricting started, what their interest and desires were, and they were ignored.⁵⁹⁷

441. The Chairman’s action delayed the consideration of real alternatives, limited discussion amongst board members, allowed for boundary definitions and manipulation of districts based around preserving rural special interests, and ultimately resulted in the last-minute stuffing of population into the MSB districts.⁵⁹⁸

442. The MSB was the last region considered in the Board’s final process, and was considered in a hasty fashion when it probably should have been the first considering its huge population growth.⁵⁹⁹

443. The net result of the board member’s individual agendas, and late negotiations amongst them to allow the opening of the rural portions of Fairbanks in exchange for a bizarrely shaped Rural district with odd appendages, was disastrous for the residents of the MSB.⁶⁰⁰

⁵⁹⁶ Trial Tr. Day 2 pg. 350.

⁵⁹⁷ *Id.* pg. 350-351.

⁵⁹⁸ Colligan Affidavit, para. 77.

⁵⁹⁹ Colligan Affidavit, para. 78.

⁶⁰⁰ Colligan Affidavit, para. 78.

TRIAL TESTIMONY - NICOLE BORROMEO

444. Member Borrromeo perpetuated the false narrative that the MSB was 20 percent underpoulated for six districts.⁶⁰¹ Member Borrromeo acknowledged that the MSB had population for 5.84 districts, meaning the MSB was only .16 shy of having a full six districts.⁶⁰² The math error is particularly concerning, because Member Borrromeo did not see her error when she was mapping.⁶⁰³

445. Member Borrromeo testified that she understood that the Board overpopulated the urban districts more so than the rural districts within the MSB.⁶⁰⁴

446. Member Borrromeo verified that a number of text messages produced during the litigation belonged to her.⁶⁰⁵ The text messages demonstrate that she was soliciting and receiving advice from third parties off the record, during open meetings, during executive session, and after meetings of the Board.⁶⁰⁶

447. Member Borrromeo's text messages with Senator Tom Begich, a representative of the Senate Minority Caucus map, show Senator Begich offering suggestions for how to map certain areas, criticizing other member's maps, sending case law references, and sending proposed senate pairings.⁶⁰⁷

⁶⁰¹ Trial Tr. Day 3 pg. 822-823.

⁶⁰² Trial Tr. Day 3 pg. 825.

⁶⁰³ Trial Tr. Day 3 pg. 826.

⁶⁰⁴ *Id.*

⁶⁰⁵ Trial Tr. Day 3 pg. 842.

⁶⁰⁶ Valdez Exhibit 3010, at pg. 103-130.

⁶⁰⁷ Valdez Exhibit 3010, at pg. 103-109.

448. Member Borrromeo’s text messages with Marna Sanford, representative of the Doyon Map, show Ms. Sanford sending mapping ideas to Member Borrromeo for review, a discussion regarding the FNSB redistricting resolution, that submission of mapping comments were coordinated for timing and to get the attention of certain members, that Member Borrromeo solicited direct feedback from Ms. Sanford during mapping discussions, discussions over senate pairings, and exchanges where they criticize other members and their maps.⁶⁰⁸

449. On October 29, 2021 Member Borrromeo had a text exchange with Marna Sanford over the resolution passed by the FNSB regarding redistricting, where Ms. Sanford admits it is late and Member Borrromeo assures her, “Nope. It’s good timing. Fresh.”⁶⁰⁹

450. On October 30, 2021, Member Borrromeo had a text exchange with Marna Sanford wherein Ms. Sanford asks how to get public comments from Sealaska in front of Member Simpson, and Member Borrromeo responds with instructions on how to have the comments distributed to the Board immediately.⁶¹⁰

451. On November 2, 2021, Member Borrromeo texted Marna Sanford directly soliciting testimony, telling her, “You guys gotta weigh in ASAP” and later coordinating a phone call.⁶¹¹

⁶⁰⁸ Valdez Exhibit 3010, at pg. 111-126.

⁶⁰⁹ Valdez Exhibit 3010, at pg. 112.

⁶¹⁰ Valdez Exhibit 3010, at pg. 112.

⁶¹¹ Valdez Exhibit 3010, at pg. 114.

452. On November 3, 2021 at 1:13 pm, Ms. Sanford sent several texts criticizing the discussion with Chair Binkley regarding the Western Alaska district and Calista, to which Member Borromeo agrees and confirms that Melanie Bahnke, “has it. I’m riding shot gun on this.”⁶¹²

453. On November 3, 2021 at 3:07 pm, Member Borromeo exchanged text messages with Marna Sanford to alert her to Chair Binkley’s position to regarding using population from the north of FNSB for the interior district.⁶¹³ Ms. Sanford responds indicating that she could be amenable to that depending on the arrangement and adding additional notes regarding the populations in that area and suggesting its political leanings.⁶¹⁴

454. After this exchange, and while the Board is still on the record, Member Borromeo asked Ms. Sanford for more examples to support her argument to use the population from Eielson Air Force Base.⁶¹⁵ Ms. Sanford sent a series of comments in response showing that she is watching the meeting and providing Ms. Borromeo direct feedback on the discussions in real time.⁶¹⁶

⁶¹² Valdez Exhibit 3010, at pg. 116-117.

⁶¹³ Valdez Exhibit 3010, at pg. 117.

⁶¹⁴ Valdez Exhibit 3010, at pg. 117-118.

⁶¹⁵ Valdez Exhibit 3010, at pg. 119.

⁶¹⁶ Valdez Exhibit 3010, at pg. 119

455. On November 4, 2021, Marna Sanford sent a series of text messages to Member Borromeo once again expressing her opinion on the districts in FNSB.⁶¹⁷

TRIAL TESTIMONY - BETHANY MARCUM

456. Member Marcum testified that the Board underpopulated Anchorage.⁶¹⁸

457. Member Marcum expressed significant concerns about combining the MSB with Valdez.⁶¹⁹ She indicated that most of the testimony the Board received from Valdez indicated that they did not want to be paired with the MSB.⁶²⁰

TRIAL TESTIMONY - PETER TORKELSON

458. Mr. Torkelson confirmed that he had never previously been involved in redistricting before this cycle, and he is not an expert in redistricting.⁶²¹

459. Mr. Torkelson indicated that he relied on one of his staff members for GIS expertise, however, that person has no formal education or training in GIS.⁶²²

460. Mr. Torkelson testified that he made updates to the website after the litigation commenced.⁶²³ Specifically, the deviation table was corrected.⁶²⁴

⁶¹⁷ Valdez Exhibit 3010, at pg. 120.

⁶¹⁸ Trial Tr. Day 5 pg. 1006.

⁶¹⁹ Trial Tr. Day 5 pg. 1008.

⁶²⁰ *Id*

⁶²¹ Trial Tr. Day 5 pg. 1063.

⁶²² Trial Tr. Day 5 pg. 1098.

⁶²³ Trial Tr. Day 5 pg. 1065.

⁶²⁴ Trial Tr. Day 5 pg. 1067.

461. The deviation table that was posted with the Proclamation Plan had incorrect district numbering.⁶²⁵ A member of the public looking at the table would have no way of knowing that the numbers in the table were incorrect.⁶²⁶ 24 out of 40 districts had the incorrect populations and deviations listed.⁶²⁷

TRIAL TESTIMONY - JOHN BINKLEY

462. Chair Binkley testified that District 29 was largely similar to 2013 District 9.⁶²⁸ However, Chair Binkley acknowledged that Valdez was paired with other Richardson Highway communities in 2013 District 9, while Valdez is not paired with any Richardson Highway communities in District 29.⁶²⁹

463. Chair Binkley provided testimony that the fact that a majority of the schools in the interior were REAA schools versus in a school district was a basis for the pairing between Valdez and the MSB.⁶³⁰ However, Chair Binkley acknowledged that Cantwell that was pulled into the interior district is a part of the Denali Borough School District.⁶³¹

⁶²⁵ Trial Tr. Day 5 pg. 1079.

⁶²⁶ Trial Tr. Day 5 pg. 1079-1080.

⁶²⁷ Trial Tr. Day 5 pg. 1082.

⁶²⁸ Trial Tr. Day 5 pg. 1145.

⁶²⁹ *Id.*

⁶³⁰ Trial Tr. Day 5 pg. 1146.

⁶³¹ *Id.*

REBUTTAL TESTIMONY – STEVE COLLIGAN

464. Mr. Colligan testified that he was not immediately aware of the errors in the matrix posted with the Proclamation Plan.⁶³² Without tools which costs tens of thousands of dollars, it is very hard for the public to participate in the process, and they would not be able to discern there were any errors in the final population matrix.⁶³³

465. Mr. Colligan reviewed the shape file again and the corrected matrix and offered amended Exhibit E to his affidavit.⁶³⁴ This was a tabulation he made to address the MSB districts with a generalized description of each district to demonstrate the total deviation per district and the senate deviation.⁶³⁵

466. Mr. Colligan confirmed that the MSB was not 20 percent short of six districts, but rather had enough population for five full districts and was 16 percent short of a sixth district.⁶³⁶ Mr. Colligan testified that meant that an approximately 2700 people needed to make up that shortage.⁶³⁷

467. Mr. Colligan testified that the concept presented to the Board by the MSB produces the short population to come up with practicable, even districts, paring the MSB

⁶³² Trial Tr. Day 6 pg. 1199.

⁶³³ Trial Tr. Day 6 pg. 1200-1201.

⁶³⁴ Trial Tr. Day 6 pg. 1202; Exhibit 4003.

⁶³⁵ *Id.*

⁶³⁶ Trial Tr. Day 6 pg. 1204.

⁶³⁷ *Id.*

with the Denali Borough and just out east toward Glennallen.⁶³⁸ This proposed combination brought the population within roughly one percent of six districts.⁶³⁹

468. Mr. Colligan described that the MSB participated for approximately five years in the process leading up to redistricting.⁶⁴⁰ The work done was to prepare data and engage the community with the Census Bureau.⁶⁴¹ Mr. Colligan set forth that the MSB showed up at the Board with cleaned up data for the MSB best possible community engagement with local boundaries and that was completely tossed out and ignored by the Board.⁶⁴²

469. The districts proposed to the Board by the MSB were compact, contiguous and socioeconomically integrated.⁶⁴³

CONCLUSIONS OF LAW

I. The court must remand the plan to the Board, as the Board erred and failed to follow required processes.

a. The Board failed to follow the *Hickel* process.

The Court recognized in *Hickel*, “[l]egislative apportionment is subject to a variety of legal requirements.⁶⁴⁴ In that case, the court outlined the priorities for the redistricting

⁶³⁸ Trial Tr. Day 6 pg. 1206.

⁶³⁹ Trial Tr. Day 6 pg. 1220.

⁶⁴⁰ Trial Tr. Day 6 pg. 1205

⁶⁴¹ *Id.*

⁶⁴² *Id.*

⁶⁴³ Trial Tr. Day 6 pg. 1207.

⁶⁴⁴ *Hickel v. Southeast Conference*, 846 P.2d 38,44 (Alaska 1992).

process, which has since become known as the “*Hickel* process.”⁶⁴⁵ With regard to the *Hickel* process, when the Board proposes a plan for redistricting, the Court has required that the Board first look towards designing the plan by focusing on compliance with Article VI, Section 6 of the Alaska Constitution.⁶⁴⁶ Only after this is done, should the Board determine whether its proposed plan complies with the Voting Rights Act.⁶⁴⁷ In this way, although violation of the Voting Rights Act is of higher importance than and will invalidate any conflicting implementation made pursuant to the Alaska Constitution, the Alaska Constitution is of a higher priority to the extent that the Voting Rights Act has been satisfied.⁶⁴⁸ In other words, the Voting Rights Act, to the extent inconsistent with the Alaska Constitution, should be followed only to the extent necessary to not be violated, then given respect and buttressed only to the extent doing so is in line with modifications made to supplement the requirements under the Alaska Constitution. “Contiguity, compactness and relative socio-economic integration are constitutional requirements.”⁶⁴⁹ Only after a redistricting board has completed its findings under the Alaska commands may a board then determine whether its proposed plan complies with the Voting Rights Act.⁶⁵⁰

⁶⁴⁵ *In re 2011 Redistricting Cases*, 274 P.3d 466.

⁶⁴⁶ *Id.*

⁶⁴⁷ *Id.*

⁶⁴⁸ *Hickel*, 846 P.2d 38.

⁶⁴⁹ *Id.* 846 P.2d at 45.

⁶⁵⁰ *In re 2011 Redistricting Cases*, 274 P.3d 466, 467-468 (Alaska 2012).

Failure to follow this process creates a plan not in compliance with applicable law.⁶⁵¹
Submittal of a noncompliant plan requires that the Plan be rejected and sent back to the Board to draft a new plan based on strict adherence to the *Hickel* process.⁶⁵²

The evidence demonstrates that the Board failed to follow the *Hickel* process. As a result of the failure to follow the process, the plan is not in compliance with the law. The Board failed to appropriately weigh the facts with regard to each district. Specifically, the plan includes districts that are not compact, contiguous, or socioeconomically integrated. This is demonstrated by the “Cantwell carve out”, the odd appendage that broke Borough boundaries to create a district that was not compact and broke the contiguity of the neighboring district. It is further demonstrated by the fact that the Board failed to ever consider the socioeconomic integration of Valdez and the MSB. The Board prioritized the VRA districts resulting in Valdez being kicked out of the interior district where it was socioeconomically integrated. The Board knew that Valdez was going to be a challenge, but left it for last. The evidence demonstrated that the only consideration with regard to where to place Valdez was where to put the population. The Board failed to follow the constitutionally mandated process as enumerated by the Court, and therefore the plan must be remanded to the Board.

⁶⁵¹ *Id.* 294 P.3d at 1037.

⁶⁵² *Id.* 294 P.3d at 1039.

b. The Board erred by prioritizing the VRA over the Alaska Constitution.

The Voting Rights Act serves to protect the voting power of racial minorities, prohibiting any denial or abridgement of the right of United States citizens to vote on account of race or color or in contravention of certain guarantees otherwise provided by law.⁶⁵³ The Voting Rights Act, in the context of a redistricting analysis, is violated if a redistricting plan would create a “retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.”⁶⁵⁴ Retrogression in this context is measured based on the number of Native effective districts included in a board’s plan, i.e. districts in which the Native population have the “ability to elect” their chosen candidate.⁶⁵⁵

The evidence demonstrates that the Board locked in the VRA Districts 37, 38, 39, and 40 at the outset ignoring the *Hickel* process and overemphasizing the VRA. By at least November 2, 2021, the Board was referring to these districts as the four “VRA districts.” The Board locked in these districts at a very early stage and would not entertain modifications, which resulted in Valdez being paired with the MSB, because the Board no longer had anywhere else to put Valdez. As the Board failed to follow the proper process, the plan must be remanded for consideration of the proper process.

⁶⁵³ 52 U.S.C. § 10301.

⁶⁵⁴ *Hickel*, 846 P.2d 38, 49.

⁶⁵⁵ *In re 2011 Redistricting Cases*, 294 P.3d at 1042; *In re 2011 Redistricting Cases*, 282 P.3d at 313.

II. The court must remand the plan to the Board, as the Board failed to perform its constitutional duties.

a. The Board violated its mandate as set forth in the Alaska Constitution

Alaska Const., Art. VI, § 6 provides that in establishing the size and area of house districts, the board shall form districts “of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area,” and that “[e]ach shall contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty.” “Each senate district shall be composed as near as practicable of two contiguous house districts.”⁶⁵⁶ Any district within a board’s proposed plan that is lacking in any of such characteristics may render the plan unconstitutional and invalid.⁶⁵⁷ “The requirements of article VI, section 6 shall receive priority *inter se* in the following order: (1) contiguousness and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.”⁶⁵⁸

i. Compact

Compactness requires that any proposed district have a small perimeter in relation to the area encompassed. However, “neither size nor lack of direct road access makes a district unconstitutionally non-compact, and population distributions are largely irrelevant

⁶⁵⁶ Alaska Const., Art. VI, § 6

⁶⁵⁷ *Hickel*, 846 P.2d at 44-45.

⁶⁵⁸ *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 n.2 (Alaska 2002) (citing *Hickel*, 846 P.2d 38 (Alaska 1992)).

to the compactness inquiry.”⁶⁵⁹ Compactness has been found to be violated when, for example, (i) a district contained a “bizarrely-shaped appendage” that was unnecessary to further any other requirement of Article VI, Section 6; (ii) a district including Cordova was drawn to extend beyond Baranof Island to the southern boundary of the State (extending the compactness too far to justify any population equality considerations that otherwise justified such reach).⁶⁶⁰ However, it has also been held that additional areas do not need to be added to districts to remedy odd appendages where doing so would substantially increase the population.⁶⁶¹

ii. Contiguous

Contiguity requires contiguous territory which is bordering or touching. This factor was addressed in *Hickel sua sponte* when the board’s plan attempted to divide the Aleutian Islands between two districts in violation of the contiguity requirement.⁶⁶²

iii. Relatively socioeconomically integrated

Socioeconomic integration requires that districts be composed of relatively integrated socioeconomic areas so that a voter is not denied his or her right to an equally powerful vote, including “sufficient evidence of socio-economic integration of the communities linked by the redistricting, proof of actual interaction and interconnectedness

⁶⁵⁹ *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (Alaska 2002).

⁶⁶⁰ *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 (2002);

⁶⁶¹ *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (2002).

⁶⁶² *Hickel*, 846 P.2d at 54.

rather than mere homogeneity.”⁶⁶³ Socio-economic integration has been found present in cases where: (i) two locations share service by the state ferry system, daily local air tax service, a common major economic activity, fishing areas, management of state lands, the predominately Native character of the populace, and historical links.⁶⁶⁴ Socio-economic integration has been found to be a problem where (A) a district sought to integrate small rural communities with urban areas that share different social concerns and political needs.⁶⁶⁵

iv. As near as practicable to the population quotient

Similar to the quantitative element of an equal protection analysis (discussed below), this provision requires any district formed by the board be “as near as practicable” to the ideal population arrived at when dividing the most recent census numbers of Alaska citizens by the available 40 house districts. While analyses under the federal standard and an old iteration of the State Constitution allowed *de minimis* deviations up to 10% without

⁶⁶³ *Hickel*, 846 P.2d at 46 (quoting *Kenai Peninsula Borough*, 743 P.2d at 1363).

⁶⁶⁴ *Hickel*, 846 P.2d at 46 (citing *Kenai Peninsula Borough*, 743 P.2d at 1361) (finding integration between Hoonah and Metlakatla with several other southeastern island communities), and (ii) two locations share a mutual membership in the Southwest Alaska Municipal Conference and share involvement in the commercial fishing industry (*In re 2001 redistricting Cases*, 44 P.3d 141, 145 (2002) (finding integration between the Upper Lakes region with the Kodiak Island Borough).

⁶⁶⁵ *Hickel*, 846 P.2d at 51 (reviewing the attempted integration of rural Native communities with the urban areas of Ketchikan and Sitka); (B) a district combined an established agricultural area with communities oriented toward commercial fishing and maritime activities. *Hickel*, 846 P.2d at 52-53 (reviewing the attempted integration of Palmer and Prince William Sound); (C) a district combined rural and suburban communities with almost no social or economic interaction. *Hickel*, 846 P.2d at 53 (reviewing the attempted integration of rural Mat-Su Borough communities with Fairbanks and military areas of the Fairbanks North Star Borough); and (D) there was no testimony in favor of linking two proposed areas, while there existed testimony regarding the physical separation of the two cultures and the historical, linguistic and economic differences between the cultures. *Hickel*, 846 P.2d at 53-54 (reviewing the attempted integration of the North Slope Inupiaq and the Interior Athabaskan areas, calling it a “worst case scenario”).

any justification from the board, revisions to Alaska’s Constitution have removed such exclusions and require the board to justify any case in which population deviance is not minimized.⁶⁶⁶ This requirement is by and large synonymous with the quantitative analysis under an equal protection argument which protects the right to “one person, one vote” and is discussed further below.

As previously stated, the Board failed to follow the *Hickel* process, and as a result, the Board failed to follow the constitutional mandates. The Board would discuss the terms within the constitution, but then failed to apply the same, or failed to apply them even-handedly. In several instances the Board would use the constitutional factors for creating districts as a matter of convenience to appease special interests, but failed to do in an even-handed statewide manner.

The evidence demonstrates that the Board failed to form districts that were compact. This was particularly evident by the breaks of the transportation corridors in Districts 29 and 30. With regard to District 30, the Board reached into the Borough boundaries of both the Denali Borough and the MSB to pull out Cantwell and place it with District 36. This Cantwell carve out resulted in a bizarrely shaped appendage based on a failure to follow the constitutional process and place more weight on testimony from certain ANCSA regions than on testimony from others. Further, with regard to District 29, the Board carved

⁶⁶⁶ *In re 2001 redistricting Cases*, 44 P.3d 141, 146 (2002).

out the entirety of the transportation corridor along the Glenn and Richardson Highways in order to grab Valdez in a district which left it orphaned. These districts are not compact.

While contiguity merely means touching, the Board purposely carved out the transportation corridor, and one must travel through another district to drive to the other side of their district. As referenced, this occurred in both Districts 29 and 30. In order to make the districts look contiguous, the Board included zero census blocks in order to make the district appear that it was touching or contiguous. Since the evidence demonstrates that the Board failed to consider contiguity in creating its districts, the Board violated the constitution.

The evidence demonstrates that the Board failed to consider the relative socioeconomic integration between the MSB and Valdez. The only discussion that occurred with where to place Valdez was purely based on the population. When the Board locked in the VRA districts and pushed Valdez out, it never again considered any socioeconomic integration. The evidence demonstrated that Valdez was socioeconomically integrated with either the Richardson Highway or Prince William Sound communities, neither of which it was paired with. This in contrast to the Board feeling it necessary to do the Cantwell carve out due to testimony regarding socioeconomic integration. The Board violated the constitution in failing to consider relative socioeconomic integration of all the districts.

Finally, the Board failed to form districts that were near as practicable to the quotient population of 18,335. The Board was very focused on obtaining small deviations until it waited until the very end to place Valdez. Because they did not place Valdez until the end, they had 4,000 people that had to be placed in a district. Rather than consider evenly distributing this population, as the evidence demonstrates, the Board dumped the population into the MSB, the area that had grown the most since the last census. This area had nearly the population to populate six districts, but the Board made the policy decision to overpopulate every district within the MSB. The evidence demonstrates statewide there are only seven districts that have a deviation of over 2%, and of those seven, five are within the MSB. The evidence demonstrates this was purposeful to strengthen the weight of the interior District 36 and dilute the weight of the districts within the MSB. There were multiple other plans adopted by the Board or offered by third parties to the Board which demonstrated lower overall deviations, demonstrating that the population in the districts within the MSB was not as near as practicable to the quotient size of 18,335, and therefore the Board violated the constitution.

b. The Board violated the constitutional provision of equal protection.

Alaska Const., Art. I, § 1 provides that all persons are equal and entitled to equal rights and protection under the law.

i. Quantitative element – “one person, one vote”

Applied to the actions of the Alaska Redistricting Board, the quantitative analysis under both federal and state analyses require that a State “make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable.”⁶⁶⁷ The “overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State.”⁶⁶⁸ The federal analysis views maximum population deviations under 10% as a “minor deviation” that requires no justification by the State absent other factors such as evidence of discriminatory intent.⁶⁶⁹ However, Article VI, Section 6 of the Alaska Constitution was amended in 1998, changing the requirement to make equality of population “as near as practicable,” requiring the State to justify any failure to reduce population deviance.⁶⁷⁰ Therefore, as alluded to above, the Alaska Constitution provides for a stricter standard, requiring population equality to be “as near as practicable,” and therefore, the State must justify any failure to reduce population deviance across districts.⁶⁷¹ This particularly as technology continues to improve, and technological advances “have streamlined the redistricting process and reduced the burden felt by the

⁶⁶⁷ *Hickel*, 846 P.2d at 47.

⁶⁶⁸ *Id.*

⁶⁶⁹ *Braun v. Borough*, 193 P.3d 719, 729 (2008).

⁶⁷⁰ 44 P.3d 141, 146 (2002).

⁶⁷¹ *Id.*

Board in past cycles.”⁶⁷² To justify population deviance, the State must offer a legitimate, non-discriminatory motivation for its actions.⁶⁷³ Failure to reduce deviations shifts the burden to the board to “demonstrate that further minimizing the deviations would have been impracticable in light of competing requirements imposed under either federal or state law.”⁶⁷⁴

The Court analyzed this issue when reviewing the Redistricting Board’s proposed redistricting plan in 2001.⁶⁷⁵ When the board proposed its initial plan, it was rejected, because the board (under a mistaken belief that any maximum deviation under 10% automatically satisfied constitutional requirements) made no effort to reduce deviations below 10%.⁶⁷⁶ Its failure to do so shifted the burden to the board to “demonstrate that further minimizing the deviations would have been impracticable in light of competing requirements imposed under either federal or state law.”⁶⁷⁷ In so finding, the Court noted that the board’s rationale for rejecting other plans with significantly lower maximum deviations stemmed from the board’s intention to maintain neighborhood patterns, but held that such patterns cannot justify “substantial disparities” in population equality, particularly in boroughs such as Anchorage that are by definition socio-economically

⁶⁷² 274 P. 3d at 468.

⁶⁷³ *Id.* 274 P.3d at 145.

⁶⁷⁴ *Id.* at 146.

⁶⁷⁵ *In re 2001 redistricting Cases*, 44 P.3d 141 (Alaska 2002).

⁶⁷⁶ *Id.* 44 P.3d at 146.

⁶⁷⁷ *Id.*

integrated, allowing multiple combinations of compact, contiguous districts with minimal population deviations.⁶⁷⁸ Only after the board restructured its plan and made the requisite good faith effort to reduce population deviations in Anchorage, ultimately reducing the maximum deviation from 9.5% to 1.35%,⁶⁷⁹ was the board’s plan approved by the Court.⁶⁸⁰ In doing so, the Court recognized the ease at which districts formed within an urban, individual borough may be structured to more closely comply with smaller population deviations, and the implied higher standard attendant to forming such districts.⁶⁸¹

The evidence demonstrates that when it came to the MSB, the Board failed to honor the maxim of “one person, one vote.” The Board failed to accomplish equal population among the districts statewide without justification. Technology has continued to improve, and if the Board had made adequate considerations of population, had the proper training, and had the proper expertise available to it, the Board could have reduced the deviations. The Board has not proffered any justification, let alone legitimate non-discriminatory motivation for its actions. The Board has a duty to demonstrate that the lower deviations before the Board in several other plans were impracticable in light of competing requirements. However, that was not the case, the issue was that the Board improperly prioritized the considerations before it, resulting in the last minute consideration of Valdez

⁶⁷⁸ *Id.*

⁶⁷⁹ 47 P.3d at 1095 n.4.

⁶⁸⁰ *Id.* 47 P.3d at 1092.

⁶⁸¹ *Id.* 47 P.3d at 1094-1095.

and the MSB. This last minute consideration turned only on population, and the Board discussing where to put Valdez. The Board made the policy decision to overpopulate the MSB far greater than any other region in the state, intentionally diluting the voice of the voters within the MSB. As a result, the Board deprived the MSB voters of the equal protection of the law.

ii. Qualitative element – “fair and effective representation”

The qualitative analysis of an equal protection argument under a redistricting framework will invalidate a plan which “systematically circumscribes the voting impact of specific population groups.”⁶⁸² The equal protection clause under the Alaska Constitution is stricter and more demanding than an analysis under federal law, placing the burden on the board to demonstrate that its plan leads to a greater proportionality of representation if there is evidence of intentional discrimination.⁶⁸³ An inference of intentional discrimination is raised “when a reapportionment plan unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters.”⁶⁸⁴ Under the State’s equal protection clause, the Court does not require that a pattern of discrimination must be shown, as no effect of disproportionality is considered de minimis.⁶⁸⁵ Valid non-discriminatory motives must be shown when for example, a board fails to keep all of a borough’s excess

⁶⁸² *Hickel*, 846 P.2d at 49.

⁶⁸³ *Id.*

⁶⁸⁴ 44 P.3d at 144.

⁶⁸⁵ *Hickel*, 846 P.2d at 49.

population in the same house district,⁶⁸⁶ or the board fails to follow logical and natural or local government boundaries.⁶⁸⁷ While retention of political boundaries has been found to be a legitimate justification for deviation from ideal district population size, it must be applied consistently to the State as a whole.⁶⁸⁸

The Board purposefully discriminated against the MSB. The inference of intentional discrimination is raised in this case, as the effective strength of the MSB voters is diluted by the fact that five of the seven districts within the State that have a deviation of 2% or greater are within the MSB. The effect of disproportionality cannot be considered de minimis. The Board must weigh the factors before it equally statewide, but by prioritizing under-populating Anchorage, affording significantly greater weight to the resolution of the FNSB, and improperly prioritizing the VRA districts, the Board violated equal protection.

III. The court must remand or invalidate the plan, as the Board took illegal actions.

- a. The Board violated the right of the public to due process.

“The Alaska Constitution provides that no person shall be deprived of life, liberty, or property, without due process of law. A due process claimant must prove the existence of state action and the deprivation of an individual interest of sufficient importance to

⁶⁸⁶ *In re 2001 Redistricting Cases*, 44 P.3d 141, 146-147 (2002).

⁶⁸⁷ *Hickel*, 846 P.2d at 51.

⁶⁸⁸ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1360 (1987).

warrant constitutional protection.”⁶⁸⁹ Alaska Const., Art. VI, § 10 provides that the Board shall adopt one or more redistricting plans within 30 days after the official reporting of the Census. The Board is required to hold public hearings on the proposed plan or all proposed plans by the Board.⁶⁹⁰ This is a matter of first impression. The Board circumvented the public process by intentionally adopting a map it intended to replace after the constitutional deadline, and therefore, violated the fundamentals of due process, notice and an opportunity to be heard, by failing to meaningfully comply with the timeline mandates set forth in the constitution, meaningfully consider the testimony from the public, and creating the plan in an arbitrary and capacious manner.

The evidence demonstrates that the Board never intended to set forth the plan it adopted within the constitutional timeframe. This is evidenced by its executive director confirming that the Board would substitute the plan outside of the constitutional timeframe but prior to the public comment road show. Furthermore, the Board weighed the public testimony of parties differently, this resulted in ANSCA boundaries being favored over socioeconomic integration and population in other areas of the State. The record demonstrates that the Board wholly ignored the testimony of the MSB and Valdez. Furthermore, the evidence demonstrates that the Board treated similarly situated local governments disparately, especially placing the wants and asks of the FNSB above the

⁶⁸⁹ *Anderson v. Alaska Housing Fin. Corp.*, 462 P.3d 19, 25 (Alaska 2020) (internal quotations omitted).

⁶⁹⁰ Alaska Const., Art. VI, § 10.

wants and asks of the MSB. The resolution of the MSB was hardly considered, and resulted in districts that are not compact, contiguous, socioeconomically integrated, or as close as practicable to the quotient population. The arbitrary and capricious actions of the Board violated the Alaska Constitution, and the plan must be remanded to the Board.

b. The Board violated the Open Meetings Act.

The Open Meetings Act (“OMA”), codified under Alaska law, states in part that “[a]ll meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law.”⁶⁹¹ Any action taken contrary to the requirements of the OMA may be voided if, under the circumstances, the public interest in compliance with the section outweighs the harm that would be caused by voiding the action.⁶⁹²

The OMA dictates that “all meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law.”⁶⁹³ “Governmental body” is defined to include “an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity,” and “public entity” is defined to include “an entity of the state or of a political subdivision of the state including an agency, a board

⁶⁹¹ AS 44.62.310(a).

⁶⁹² AS 44.62.310(f).

⁶⁹³ AS 44.62.310(a).

or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state.”⁶⁹⁴ The OMA specifically includes in its coverage and the definition of “governmental body” and “public entity” a “board” or “other similar body”. This is demonstrated by the fact that the Board itself acknowledges the broad coverage of such definitions and acknowledges that these can be read to include the Board in its Public Meeting & Notice Requirement Policy adopted January 26, 2021.⁶⁹⁵

This Court has already recognized in its Order Re. Motion For Rule Of Law – Attorney Client Privilege dated January 18, 2022, that not only does the Board fall within the plain language of the OMA, but that an interpretation of the Act to include the Board is consistent with the stated intent of the Act itself. As has been further noted by this Court, the Board has even explicitly elected to be governed by the OMA. In the Board’s Public Meeting Policy, the Board specifically agreed, pursuant to unanimous consent on January 26, 2021, that: “It is the policy of the Alaska Redistricting Board that the board comply with the Alaska Open Meetings Act”⁶⁹⁶

The OMA exists for the purposes of maintaining open public information, and it is the stated policy of the state with respect to the OMA that:

⁶⁹⁴ AS 44.62.310(h)(1), (3).

⁶⁹⁵ The Alaska Redistricting Board’s Public Meeting & Notice Requirement Policy was filed with the court pursuant to a request related to the Motion for Rule of law.

⁶⁹⁶ *Id.*

- (1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;
- (2) **it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;**
- (3) the people of this state do not yield their sovereignty to the agencies that serve them;
- (4) **the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;**
- (5) **the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;**
- (6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.⁶⁹⁷

The carve-out in AS 44.62.310(c) for executive session “shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions.”⁶⁹⁸ Executive sessions must be convened by motion in which the matters to be discussed must be described “clearly and with specificity.”⁶⁹⁹ Only those matters described in the motion or auxiliary to such matters may be discussed in executive session.⁷⁰⁰ The attorney-client privilege exists alongside the Act and protects valid protected material, but must be narrow, and should be applied “only when the revelation of the communication will injure the public interest or there is some other recognized purpose in keeping the communication

⁶⁹⁷ AS 44.62.312(a) (emphasis added).

⁶⁹⁸ AS 44.62.312(b).

⁶⁹⁹ AS 44.62.310(b).

⁷⁰⁰ *Id.*

confidential.”⁷⁰¹ Among other reasons, the privilege can be waived if a person, “while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication.”⁷⁰²

The evidence in this matter demonstrates that the Board violated the OMA on multiple occasions. It is clear that the Board would adjourn to executive session for matters that should have been heard in public. This is evident where the Board would discuss matters and come back to open session the next day already having made a determination without discussion of the necessary factors, any justification or findings. This was particularly the case when the Board discussed drawing Valdez with the Prince William Sound communities considering lack of socioeconomic integration with other proposed pairings, adjourned to executive session, and made a determination to pair Valdez with the MSB. Furthermore, the fact that at least one Board member was texting individuals to solicit specific testimony and texting people who had testified for a specific position while in executive session. The egregious actions by the Board to hide the process from the public require the plan to be remanded to the Board, and for the Board to go through the *Hickel* process in open session.

⁷⁰¹ *Cool Homes, Inc. v. Fairbanks North Star Borough*, 860 P.2d 1248, 1262 (Alaska 1993).

⁷⁰² Alaska R. Evid. 510.

DATED this 9th day of February 2022, at Anchorage, Alaska.

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